

# GENERAL INDEX

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| <p>ACTS—1860—XLV (INDIAN PENAL CODE), SECTION 194—"Causing a circumstance to exist"—<i>Bringing tutored evidence before a court—Charge translated into Urdu and read out to jury by Government pleader—Procedure.</i> <i>Held</i> that a person who brings before a court a witness whom he has tutored to tell a false story concerning the case before it, may properly be convicted under section 194 of the Indian Penal Code. <i>Emperor v. Cheda Lal</i>, I. L. R., 29 All., 351, and <i>Durga Prasad v. Emperor</i>, 30 Indian Cases, 651, referred to.</p> <p>A Sessions Judge having a rather complicated charge to deliver to a jury, and not feeling quite sure that he had sufficient Urdu to be able to make himself perfectly intelligible to them, wrote out his charge in English and then got the Government Pleader to translate it and read it to the jury. <i>Held</i> that this procedure was not illegal.</p> <p><i>Emperor v. Sur Nath Bhaduri</i>, I. L. R., 50 All. ... 365</p> |     |

Acts—1860—XLV (INDIAN PENAL CODE), SECTION 215—*Essential ingredients of the offence defined.*] The primary aim of section 215 of the Indian Penal Code is to punish all trafficking in crime by which a person, knowing that property has been obtained by crime, and knowing the criminal, makes a profit out of the crime, while screening the offender from justice.

Where a man undertook to attempt to recover certain horses which were believed to have been stolen, and took money for so doing; but there was no evidence to show that he had any knowledge of who the thief was, or that he was making any attempt to screen the thief from justice, or that he failed to use all means in his power to cause the offender to be apprehended, it was held that he could not rightly be convicted of the offence defined in section 215.

Emperor v. Mangu, I. L. R., 50 All. ... 186.

Acts—1860—XLV (INDIAN PENAL CODE) SECTION 447—*Criminal trespass—Essential ingredients of offence.*] It is essential to the validity of a conviction of the offence of criminal trespass that the court should find the offence to have been committed with one or other of the intentions named in section 447 of the Indian Penal Code, viz., either to commit an offence or to intimidate, insult or annoy the party in possession. *Emperor v. Jangi Singh*, I. L. R., 26 All., 194, followed. *Ghasi v. Emperor*, 15 A. I. J., 793, referred to.

Emperor v. Mathura Rai, I. L. R., 50 All. ... 637.

Acts—1860—XLV (INDIAN PENAL CODE), SECTION 500, *See Act No. XXV of 1867*, section 7 ... 806.

Acts—1867—III (PUBLIC GAMBLING ACT), SECTIONS 3 AND 4—*Accused charged under different sections, but offences committed in the course of the same transaction—Joint trial—Criminal Procedure Code, section 239 (d).*] There is nothing to prevent persons charged with offences under sections 3 and 4 of the Public Gambling Act, 1867, being tried jointly with persons charged only with offences under section 4, provided that all the offences were committed in the course of the same transaction. *Makhan v. Emperor*, 5 Indian Cases, 720, and *Emperor v. Fazal Din*, 27 Indian Cases, 844, dissented from.

Emperor v. Darab, I. L. R., 50 All. ... 112.

Acts—1867—XXV (PRESS AND REGISTRATION OF BOOKS ACT), SECTION 7—*Newspaper—"Declared printer"—Responsibility of printer for defamatory matter printed in a newspaper—Act No. XLV of 1860 (Indian Penal Code), section 500.*] *Prima facie* the person who is the "declared printer" of a newspaper is responsible for everything that is printed in it. He can, however, escape liability by showing that he was absent *bona fide*, that is, not with the purpose of evading responsibility, when a particular article complained of was printed. But if he does so, he is bound to give evidence as to who the actual printer of the paper in his absence was. *Emperor v. Phanendra Nath Mitter*, I. L. R., 35 Cal., 945, followed.

Emperor v. Muhammad Siraj, I. L. R., 50 All. ... 806.

Acts—1870—VII (COURT FEES ACT), SECTION 4.—*Civil Procedure Code section 149—Memorandum of appeal presented on an insufficient stamp—Procedure.*] A court is not bound to accept a memorandum of appeal when it has been brought to its notice that the memorandum is insufficiently stamped. The concession contemplated by section 149 of the Code of Civil Procedure cannot be claimed as of right. *Ram Sahay Ram Pande v. Kumar Lachmi*

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Narayan Singh, 3 Pat. L. J., 74, *Lekh Ram v. Ramji Das*, I. L. R., 1 Lah., 234, and *Akharaju Narayana v. Akharaju Seshamma*, 27 M. L. J., 677, referred to. *Achut Ramchandra Pai v. Nagappa Babu Balgya*, I. L. R., 38 Bom., 41, dissented from.

No doubt, if an insufficiently stamped memorandum of appeal is accepted by inadvertence, time may be given to the appellant to supply the deficiency. But if the court is aware *ab initio* of the insufficiency of the stamp, it ought to return the memorandum to the appellant in order that he may, if the case admits, represent it properly stamped and apply for an extension of time under section 5 of the Indian Limitation Act, 1908, *Jai Singh Gir v. Sita Ram Singh*, 21 A. L. J., 333, referred to.

*Brijbhukhan v. Tota Ram*, I. L. R., 50 All. ... 980

ACTS—1870—VII (COURT FEES ACT), SECTION 7, CLAUSE (iv) (c)—Act No. VII of 1887 (*Suits Valuation Act*), section 8—*Court fee—Suit for a declaration of plaintiff's title and for possession.*] If a plaintiff elects to ask in his plaint for a declaration of his title as well as for possession of certain property, when he need only have sued for possession *simpliciter*, he will have to pay court fees as on a suit for a declaration with consequential relief, unless the court allows him to amend his plaint by striking out the prayer for a declaration. So *held*, where the plaintiff had prayed (a) for a declaration that a mortgage executed by his co-parcener and a decree for foreclosure obtained thereon were void and ineffectual, and (b) for possession. *Ganga Dei v. Sukhdeo Prasad*, I. L. R., 47 All., 78, followed. *Tika Ram v. Saliq Ram*, 57 Indian Cases, 494, dissented from.

*Tula Ram v. Dwarka Das*, I. L. R., 50 All. ... 610

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ACTS—1872—I (INDIAN EVIDENCE ACT), SECTIONS 32(5)—*Evidence—Statements made post litem motam—Meaning of the expression "before the dispute arose."*] The expression "before the question in dispute was raised", as used in section 32, clause (5) of the Indian Evidence Act, 1872, does not necessarily mean simply before a suit has been filed, but before the dispute which afterwards culminates in a suit has arisen. *Kalka Prasad v. Mathura Prasad*, I. L. R., 30 All., 510, followed. *Bahadur Singh v. Mohar Singh*, I. L. R., 24 All., 94, and *Mauladad Khan v. Abdul Sattar*, 15 A. L. J., 349, referred to.

*Rup Kishor v. Patrani*, I. L. R., 50 All. ... 152

ACTS—1872—I (INDIAN EVIDENCE ACT), SECTION 33—*Witness—Effect of death of witness before cross-examination is complete.*] If a witness under examination by a court dies before his cross-examination is completed, no part of his evidence can be made use of. *Boisagomoff v. The Nahapiet Jute Company*, 5 C. W. N., (Notes), p. ccxxx, followed.

*Narsingh Das v. Gokul Prasad*, I. L. R., 50 All. ... 113

ACTS—1872—I (INDIAN EVIDENCE ACT), SECTION 92—*Evidence—Admissibility of evidence to show that two ostensible sales were in reality one transaction of exchange—Pre-emption.*] *Held* (1) that evidence is admissible to show that two documents which on the face of them were two separate sale-deeds were really intended to carry out one transaction, namely, an exchange, and (2) that, this being the case, no suit for pre-emption could lie. *Hanif-un-nissa v. Faiz-un-nissa*, I. L. R., 33 All., 340, referred to.

*Kishan Lal v. Ram Lal*, I. L. R., 50 All. ... 69

- ACTS—1872—I (INDIAN EVIDENCE ACT), SECTION 92, PROVISIO (3), *See* Act No. XXVI of 1881, section 46 ... 754
- ACTS—1872—I (INDIAN EVIDENCE ACT), SECTION 114—*Presumption—Civil Procedure Code, section 100—Second Appeal—Failure of court of first appeal to invoke a presumption of fact.*] In a suit for a declaration that a certain sale-deed ostensibly executed by D was forged, fraudulent and fictitious, it was found that the deed was as a matter of fact signed by D, by placing his thumb-impression on it. No evidence was led by the plaintiff to prove that the thumb-impression had been obtained in any manner which might render it invalid.
- Held*, that, in the absence of any such evidence, the court was bound to draw the inference that the deed was properly executed, and, as this was an inference of the kind illustrated in section 114 of the Indian Evidence Act, 1872, the failure to draw it was sufficient to support a second appeal. *Ranee Sumomoyee v. Luchmeput Doogur*, 9 W. R., C. R., 338, and *Nilatatchi v. Venkatachala Mudali*, 1 Mad. H. C. R., 131, referred to.
- Sita Ram v. Nanku*, I. L. R., 50 All. ... 115
- ACTS—1872—I (INDIAN EVIDENCE ACT), SECTION 115, *See* Act No. IX of 1872, section 11 ... 862
- ACTS—1872—I (INDIAN EVIDENCE ACT), SECTIONS 145 AND 155, *See* Criminal Procedure Code, section 164 ... 242
- ACTS—1872—IX (INDIAN CONTRACT ACT), SECTION 11—*Act No. I of 1872 (Indian Evidence Act), section 115—Contract entered into with an infant representing himself to be of full age—Estoppel—Equitable relief.*] Where a suit is brought upon a contract entered into with an infant on the strength of a representation made by the infant that he is of full age, the defendant will not be estopped from pleading his minority; but, *semble*, upon equitable grounds he might be made liable for any loss which the plaintiff might have suffered in carrying out the contract entered into with him.
- Radha Kishan v. Bhore Lal*, I. L. R., 50 All. ... 862
- ACTS—1872—IX (INDIAN CONTRACT ACT), SECTIONS 23 AND 30—*Principal and agent—Wagering contract—Suit between principal and agent.*] In the United Provinces a claim by a principal against an agent or by an agent against his principal arising out of a contract is not affected by the circumstance that, as between the principal and the other party to the contract, it may be a wagering transaction. *Sobhagmal Gianmal v. Mukunchand Balia*, I. L. R., 51 Bom., 1, and *Hardco Das, Nanak Chand v. Ram Prasad, Shyam Sundar*, I. L. R., 49 All., 438, referred to.
- Ram Prasad, Shyam Sundar Lal v. Ramji Lal*, I. L. R., 50 All. ... 115
- ACTS—1872—IX (INDIAN CONTRACT ACT), SECTION 69, *See* Act No. IV of 1882, section 55 (1) (g) ... 371
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- ACTS—1872—IX (INDIAN CONTRACT ACT), SECTIONS 72 AND 73—*Obligation resembling contract—Compensation due under the Land Acquisition Act, 1894, paid by mistake to the wrong person—Duty of person receiving such payment to refund—Interest.*] Certain compensation which would have been due to one B under the provisions of the Land Acquisition Act, 1894, had he survived, was paid by mistake to A.K. on the supposition that he was the legal representative of B. It was afterwards found that A.K. was not the legal representative of B, but that one L.C. was.

*Held* that sections 72 and 73 of the Indian Contract Act applied. *AK* was bound to refund to *LC* the money paid to him by mistake, and, as he had for a considerable period avoided payment thereof, he was properly chargeable with interest for the time during which the money had been withheld.

*Held*, also, that illustration (n) to section 73 of the Indian Contract Act, 1872, is not exhaustive and cannot be considered as co-extensive with the provisions of the section itself. *Jwala Prasad v. Hoti Lal*, I. L. R., 46 All., 625, and *Abdul Shafu Rowther v. Hamida Bivi Ammal*, I. L. R., 42 Mad., 661, referred to.

*Anrudh Kumar v. Lachhmi Chand*, I. L. R., 50 All. ... 818.

ACTS—1872—IX (INDIAN CONTRACT ACT), SECTIONS 73, 77, 87 AND 88—*Sale—Earnest money—Failure of seller to make delivery—Right to recovery of earnest money.*] Although there is no specific provision in the Indian Contract Act relating to the refund of money paid as earnest-money or part payment, where such a payment is made on a contract for the sale of goods to be delivered at a later date and the seller does not make delivery, the buyer is entitled to recover the money so paid.

*Piari Lal v. Mina Mal*, *Balkishan Das*, I. L. R., 50 All. ... 82.

ACTS—1872—IX (INDIAN CONTRACT ACT), SECTION 78—*Shares—Agreement to sell so many shares in a particular company—"Unascertained goods"—Act No. VII of 1913 (Indian Companies Act), sections 18 and 28—Breach of agreement to transfer shares—Measure of damages.*] "Goods" as defined in the Indian Contract Act, 1872, comprise every kind of movable property, including shares in a company. Where, therefore, a person agrees to sell so many shares in a company without specifying the numbers of the share certificates, the agreement is merely an agreement to sell unascertained goods and passes no interest in any shares owned by the vendor until such shares are definitely ascertained.

An agreement for the sale of shares does not imply a further agreement to have the transferee's name registered as the holder.

In the event of the proposed transferee refusing to complete such an agreement by the purchase of the stipulated number of shares, the measure of damages would be the difference between the contract price and the market price at the time when the breach took place; but it would be the duty of the transferor to mitigate the loss consequent upon the breach. *Jamil v. Moolia Dawood Sons and Co.*, I. L. R., 43 Cal., 493, *Maneckji Pestonji Bharucha v. Wadilal Sarabhai and Co.*, I. L. R., 50 Bom., 360, *London Founders Association v. Clarke*, L. R., 20 Q. B. D., 576, *Muir Mills Co. Ltd., of Cawnpore v. T. H. Condon*, I. L. R., 22 All., 410, *Bahadar Singh v. Shiam Sundar Tug*, I. L. R., 36 All., 365, and *Namney v. Morgan*, 37 Ch. Div., 346, referred to.

*Domingo v. DeSouza*, I. L. R., 50 All. ... 695.

ACTS—1872—IX (INDIAN CONTRACT ACT), SECTIONS 108 AND 178, *See Railway receipt* ... 227.

ACTS—1872—IX (INDIAN CONTRACT ACT), SECTION 134—*Principal and surety—Remedy of creditor against principal debtor allowed to become time-barred—Discharge of surety—Appeal—Operation of decree not suspended by the filing of an appeal.*] If a creditor allows his remedy against the principal debtor to become barred by time, the legal consequence of this is that the principal debtor is discharged within the meaning of section 134 of the Indian Contract Act, 1872, and the creditor can no longer proceed against the surety. *Hazari v. Chunni Lal*, I. L. R., 8 All., 259, *Radha*

*v. Kinlock*, 1. L. R., 11 All., 310, and *Ranjit Singh v. Naubat*, 1. L. R., 24 All., 504, referred to.

*Held* also that under the Indian law and procedure an original decree is not suspended by presentation of an appeal nor is its operation interrupted when the decree is one of dismissal, and the cause of action arises on the passing of the first court's decree and is not suspended till that decree is finally affirmed on appeal. *Juscurn Boid v. Pirthichand Lal Choudhury*, 1. L. R., 46 Calc., 670, followed.

*Salig Ram Misir v. Lachhman Das*, 1. L. R., 50 All. ... 211

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ACTS—1872—IX (INDIAN CONTRACT ACT), SECTION 247, See Hindu law 776

ACTS—1872—IX (INDIAN CONTRACT ACT), SECTION 251—Act No. IX of 1908 (*Indian Limitation Act*), sections 19, 20 and 21—*Partnership—Joint Hindu family—Acknowledgment*.]. When a joint Hindu family carries on a business, the members thereof are in the position of partners as regards persons dealing with that business.

An acknowledgement, therefore, made by one member of the family, of a debt due by the family in the course of its family business, can be availed of by the creditor as against the entire family. *Gadu Bibi v. Parsotam*, 1. L. R., 10 All., 418, followed. *Lalta Prasad v. Babu Prasad*, 1. L. R., 32 All., 51, distinguished.

*Debi Dayal v. Baldeo Prasad*, 1. L. R., 50 All. ... 982

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*Aulia Bibi v. Ala-ud-din*, 1. L. R., 28 All., 715, *Janki v. Kallu Mal*, 1. L. R., 31 All., 236, and *Sarabai Amibai v. Mahomed Cassum*, 1. L. R., 43 Bom., 641, followed.

*Balmakund v. Ramendra Nath Ghose*, 1. L. R., 50 All. 314

ACTS—1881—XXVI (NEGOTIABLE INSTRUMENTS ACT), SECTIONS 9 AND 59—*Suit by endorsee against drawer of a cheque—“Holder in due course.”*] A cheque is payable on demand and the amount becomes payable when the cheque is presented for payment to the drawee.

Where the plaintiff, on the 28th of September, took a cheque which had been drawn on the 5th of June, in good faith, for consideration, without notice of its having been dishonoured and without having any reason to believe that there was any defect in the title of his transferor and it was found that the transferor was not a holder for value, the endorsement to him being fictitious, it was held, that the plaintiff was not a “holder in due course” and therefore his claim against the drawer must fail.

*Ram Sarup v. Hardeo Prasad*, 1. L. R., 50 All. ... 309

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Acts—1881—XXVI (NEGOTIABLE INSTRUMENTS ACT), SECTION 46—  
 Act No. I of 1872 (*Indian Evidence Act*), section 92, *proviso* (3)—  
*Promissory note—Suit on note—Defendant entitled to give evidence of collateral agreement delaying payment of note.*]  
 There is nothing in law to debar the maker of a promissory note from pleading as a defence to a suit thereon that as a matter of fact the note was given for a special purpose and was not payable until the happening of a certain specific event which, so far, had not yet happened.

*Sheo Prasad, Ram Prasad v. Gobind Prasad*, I. L. R., 49 All., 464, followed. *Sri Ram v. Sobha Ram, Gopal Rai*, I. L. R., 44 All., 521, dissented from.

*Bhogi Ram v. Kishori Lal*, I. L. R., 50 All. ... 754

Acts—1882—IV (TRANSFER OF PROPERTY ACT), SECTIONS 4 and 54—  
 Act No. XVI of 1908 (*Indian Registration Act*), sections 17 and 49—*Usufructuary mortgage—Sale by unregistered deed of mortgagor's interest to mortgagee—Adverse possession—Registration.*]  
 The predecessor in interest of one D, in 1873, mortgaged a house to RM, the mortgage being usufructuary. In 1901 D sold the house to RM, for Rs. 90. A sale-deed was executed but was never registered. In 1919 (D having died in 1914) D's heir sold the same house to ML and others.

*Held*, on suit by the second purchasers for redemption that, although the unregistered sale-deed of 1901 was of no avail to pass title, and there could be no delivery of possession, inasmuch as the mortgagee had been in possession all along, yet the deed was available as evidence of a change in the nature of the mortgagee's possession, and, that being so, the possession of the mortgagee must be counted as adverse from the date of its execution. The mortgagor's heir had, therefore, in the year 1919, no title which he could transfer, and the plaintiffs' suit must fail.

The effect of section 4 of the Transfer of Property Act is not to make section 49 of the Registration Act applicable to documents which are compulsorily registrable by the provisions of section 54, paragraph 2, of the Transfer of Property Act and not by the provisions of section 17 of the Registration Act itself.

*Per MUKERJI and KENDALL, JJ. (SULAIMAN, A. C. J., dissenting)* :—The sale by a mortgagor of his interest in property of which he has made a usufructuary mortgage is a sale of "tangible immovable property."

The following cases were referred to :—*Sibendrapada Banerjee v. Secretary of State for India in Council*, I. L. R., 34 Cal., 207, *Muthukaruppan Samban v. Muthu Samban*, I. L. R., 38 Mad., 1158, *Rama Sahu v. Gowro Ratho*, I. L. R., 44 Mad., 35, *Dawal Piranshah v. Dharma Rajaram* I. L. R., 41 Bom., 550, *Rahmat Ali v. Muhammad Mazhar Husain*, 11 A. L. J., 407, *Ramasami Pattar v. Chinan Asari*, I. L. R., 24 Mad., 449, *Corea v. Appuhamy* [1912] A. C., 230, *Mahendra Bahadur Singh v. Chandrapal Singh*, 24 Oudh Cases, 155, *Sheikh Hushmat v. Sheikh Jamir*, 52 Indian Cases, 558, *Jhamplu v. Kutramani*, I. L. R., 39 All., 696, *Thomas v. Thomas*, 2 Kay and Johnson, 79, *Khizarj Mal v. Daim*, I. L. R., 32 Calc., 296, *Lalman Pande v. Sheo Narain Pande*, 17 A. L. J., 737 and *Khedu Rai v. Sheo Parson Rai*, I. L. R., 39 All., 423.

*Sohan Lal v. Mohan Lal*, I. L. R., 50 All. ... 986

Acts—1882—IV (TRANSFER OF PROPERTY ACT), SECTIONS 4 AND 137,  
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**ACTS—1882—IV (TRANSFER OF PROPERTY ACT), SECTION 6—Offerings at a temple—Right to receive, transferable—"Property"—"Mere possibility."]** Although the right to receive the emoluments attached to a priestly office is not, in the absence of a custom or usage to the contrary, ordinarily transferable, when the right to receive offerings made at a temple is independent of an obligation to render services involving qualifications of a personal nature, such as officiating at the worship, there is no justification for holding that such a right is not transferable. *Mancharam v. Pranshankar*, I. L. R., 6 Bom., 298, *Rajah Yurmah Valia v. Ravi Yurmah Mutha*, 4 I. A., 76, *Durgu Bibi v. Chanchal Ram*, I. L. R., 4 All., 81, and *Srimati Mallika Dasi v. Ratanmani Chakarvarti*, 1 C. W. N., 493, referred to. *Pragi v. Gauri Shankar*, 51 Indian Cases, 86, distinguished. *Pancha Thakur v. Bindeswari Thakur*, I. L. R., 43 Cal., 28, and *Sulch Lal v. Bishambhar*, I. L. R., 39 All., 196, dissented from. *Ahmad-ud-din v. Ilahi Bakshi*, I. L. R., 34 All., 465, followed.

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**ACTS—1882—IV (TRANSFER OF PROPERTY ACT), SECTIONS 28, 30, See Hindu law ... 375.**

**ACTS—1882—IV (TRANSFER OF PROPERTY ACT), SECTIONS 83 AND 84—Mortgage—Redemption—Deposit of mortgage money in court—Conditions necessary for an effective deposit—Dispute as to minority of mortgagee.]** In order that the consequences attached by section 84 of the Transfer of Property Act, 1882, to a tender made under section 83 of the same should ensue, it is necessary that the mortgage money should be deposited to the credit of the real mortgagee, and of him alone. Hence, where the mortgagee was a person in whose family the custom of primogeniture prevailed, and he died leaving him surviving two sons, it was held that a deposit of the mortgage money to the credit of both the sons was not a valid deposit within the purview of section 83. *Debendra Mohan Rai v. Sona Kumwar*, I. L. R., 26 All., 291, and *Madhavi Amma v. Kunhi Pathumma*, I. L. R., 23 Mad., 510, followed. *Ram Sumran v. Sahibzada Bijai Partab Narain Singh*, Weekly Notes, 1885, p. 328, distinguished.

If, upon a deposit being made, a question arises as to the majority or minority of the person in whose favour the money is deposited, the question must be decided by the court and a guardian *ad litem* appointed, if necessary. *Ruckmani v. Vecra-sami*, 47 M. L. J., 370, *Kannu Mal v. Indarpal Singh*, I. L. R., 45 All., 273, *Pandurang v. Mahadaji*, I. L. R., 27 Bom., 23, and *Gokul Kalwar v. Chandar Sekhar*, I. L. R., 48 All., 611, referred to.

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**ACTS—1882—IV (TRANSFER OF PROPERTY ACT), SECTION 36—Purchase at auction of zamindari property—Possession delayed—Collection of rents by judgment-debtor—Method of apportioning collections between judgment-debtor and auction-purchaser.]** Plaintiff, on the 20th of February, 1919, became the purchaser at an auction-sale held in execution of a decree of some zamindari property. He did not, however, get possession until some time in June, 1919, and meanwhile the judgment-debtor had made certain collections on account of the *rabi* of 1919.

*Held*, on suit by the auction-purchaser to recover from the judgment-debtor his proportionate share of the moneys collected, that the rights and liabilities between the plaintiff and the defend-



ant should have been determined on the basis of the total *rabi* rent and the number of days in the *rabi* season, the defendant being given credit for a proportion of the *rabi* rent based on the number of days which fall within the period of his lawful possession, and the plaintiff being credited with a share of the *rabi* rent based on the number of days between the date of his purchase and the date on which the *rabi* rent fell due.

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ACTS—1882—IV (TRANSFER OF PROPERTY ACT), SECTION 52—*Lis pendens*—*Mortgage of property in suit pendente lite*—*Effect of decree on rights of mortgagee.*] *T* and *D* sued *DD* for the recovery of certain property. The suit was decreed, and the defendant appealed. Pending this appeal, the plaintiffs mortgaged an 8 biswa share in village Urena, which was part of the property in dispute, to one *W*. Subsequently the parties compromised the case, and by the decree which was passed in accordance with the compromise each of the parties got half of the property mortgaged, and it was further provided that the defendant *DD* should be liable for the debt due to *W* and that neither *T* nor *D* nor their property should be liable therefor. *W* having sold his rights as mortgagee, the vendees then sued on the mortgage.

Held by SULAIMAN and MURBERI, JJ., that the mortgage was enforceable only against the 4 biswa share of the village Urena which was still held by *T* and *D*.

Per LINDSAY, J., dissenting:—

A transferee *pendente lite* is bound by the decree just as much as if he were a party to the suit and he must be bound by the whole decree and is not at liberty to take advantage of one part of the decree and repudiate another part.

The mortgage, therefore, was enforceable only against the 4 biswa share which had fallen to *DD* under the compromise.

Sheo Narain v. Chunni Lal, I. L. R., 22 All., 243, Gulzari Lal v. Madho Ram, I. L. R., 26 All., 447, Faiyaz Husain Khan v. Prag Narain, I. L. R., 29 All., 330, Radhamadhub Haldar v. Monohar Mukerji, I. L. R., 15 Calc., 756, Moti Lal v. Karab-uddin, I. L. R., 25 Calc., 179, Bellamy v. Sabine, 1 DeG. and J., 506, Hukm Singh v. Zauki Lal, I. L. R., 6 All., 506, and Annamala Chettiar v. Malayandi Appaya, I. L. R., 29 Mad., 426, referred to.

Shiam Lal v. Sohan Lal, I. L. R., 50 All. ...

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ACTS—1882—IV (TRANSFER OF PROPERTY ACT), SECTION 52—*Mortgage Lease executed by mortgagor after passing of decree for sale—Lease voidable by auction purchaser*—“*Agricultural holding*”—*Procedure—No vested interest in procedure.*] Held (1) that a lease of complete specific *khewat* numbers, with areas and Government revenue separately specified, and where the lessee is given power to cultivate the lands himself or to have them cultivated by other tenants, is a lease of an agricultural holding within the meaning of the Agra Tenancy Act, 1901;

(2) that a suit for a declaration that such a lease is invalid is not exclusively confined to a civil court and the revenue court has jurisdiction to declare it invalid;

(3) that where such a lease was executed after a decree for sale had been passed on a mortgage which comprised the property leased, the lease could not enure beyond the time when the mortgaged property was sold in execution of the decree, and could be avoided by the purchaser under section 52 of the Transfer of Property Act;

(4) that enactments dealing with procedure have an immediate effect and must, unless the contrary is expressed, apply to all actions, whether commenced before or after the passing of the Act.

*Sher Khan v. Debi Prasad*, I. L. R., 37 All., 254, *Ram Singh v. Girraj Singh*, I. L. R., 37 All., 41, and *Raghunath v. Ganesh*, I. L. R., 42 All., 222, referred to. *Rani Dhandei Kuar v. Chhotu Lal*, 19 A. L. J., 890, and *Amina Bibi v. Saiyid Yusuf*, I. L. R., 44 All., 748, distinguished.

*Nisar Husain v. Sundar Lal*, I. L. R., 50 All. ... 202

ACTS—1882—IV (TRANSFER OF PROPERTY ACT), SECTION 53—*Fraudulent transfer—Hindu law—Joint family property—Partition after decree obtained against the father.*] The sons in a joint Hindu family at any time up to attachment of the joint family property can enter into a partition with their father with the express object of avoiding attachment of what up to the time of the partition has been joint family property, and if they do so, their individual property acquired by the partition will not be liable to attachment. The partition can only be set aside on evidence showing fraud, and the mere fact of the desire to save their property will not be sufficient to justify an inference of fraud. *Indar Pal v. The Imperial Bank of India*, I. L. R., 37 All., 214, distinguished. *Bhagwant v. Kedari*, I. L. R., 25 Bom., 202, *Krishnasami Konan v. Ramasami Ayyar*, I. L. R., 22 Mad., 519, and *Peda Venkanna v. Sreenivasa Deekshatalu*, I. L. R., 41 Mad., 136, followed.

*Gaya Prasad v. Murlidhar*, I. L. R., 50 All. ... 137

ACTS—1882—IV (TRANSFER OF PROPERTY ACT), SECTION 55, CLAUSE (1) (g)—*Act No. IX of 1872 (Indian Contract Act), section 69—Sale of immovable property—Discharge of incumbrance—Purchaser discharging undisclosed mortgage—Liability of vendor—Construction of contract.*] A stipulation in a contract for the sale of immovable property that in the event of part of the property being sold as the result of an undisclosed incumbrance the vendor shall repay a proportionate part of the consideration, does not affect the vendor's obligation under section 55, clause (1) (g) of the Transfer of Property Act, 1882, to pay incumbrances, nor the consequent right of the purchaser under section 69 of the Indian Contract Act, 1872, to recover from the vendor the amount paid in discharge of a mortgage decree obtained after possession has been taken.

*Bhagwati v. Banarsi Das*, I. L. R., 50 All. ... 371

ACTS—1882—IV (TRANSFER OF PROPERTY ACT), SECTIONS 74, 82, 95 AND 100—*Suit for contribution—Limitation—Act No. IX of 1908 (Indian Limitation Act), schedule I, article 132—"Subrogation"—"Incumbrance."*] J.R., being the owner of a large amount of immovable property, executed a number of mortgages on different dates and in favour of different mortgagees, and in several instances the same items of property were mortgaged more than once. One of these mortgages, dated the 23rd of September, 1899, was put in suit and a decree obtained thereon, when one C.L., who was a party to the decree and was interested as a puisne mortgagee of one of the items included in the mortgage and also as a purchaser of the same, paid the whole of the decretal amount on the 19th of July, 1916. Thereafter C.L. sold all the rights which he had acquired by this payment to A.A. and others, who on the 25th of April, 1922, brought the present suit, asking for contribution as against several properties held by the defendants.

*Held*, that the suit was not barred by limitation. The right to contribution arose on the payment made on the 19th of July, 1916, and under article 132 of the first schedule to the Indian Limitation Act, 1908, the plaintiffs had twelve years within which to sue. *Raj Kamini Debi v. Multanda Lal Bandapadhyaya*, 57 Indian Cases, 868, dissented from. *Shib Lal v. Munni Lal*, I. L. R., 44 All., 67, *Ashfaq Ahmad v. Wazir Ali*, I. L. R., 14 All., 1, and *Har Prasad v. Raghunandan Prasad*, I. L. R., 31 All., 166, referred to.

Meaning of the term "subrogation" discussed. *Digambar Das v. Harendra Narayan Pandey*, 14 C. W. N., 617, and *Ahmad Wali Khan v. Shasm-ul-Jahan Begam*, I. L. R., 28 All., 482, referred to.

*Held* also, on a construction of section 82 of the Transfer of Property Act, 1882, that the term "incumbrance" as therein used was not confined to mortgages, but included any other sort of incumbrance also. *Hari Raj Singh v. Ahmad-ud-din Khan*, I. L. R., 19 All., 545, referred to.

*Aziz Ahmad Khan v. Chhote Lal*, I. L. R., 50 All. ... 569

ACTS—1884—XIII (AGRICULTURISTS LOANS ACT), SECTION 4—*Taqavi loan—Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 145, 183, 233(m)—Alleged wrongful attachment of property to realize taqavi—Payment under protest followed by suit against Secretary of State.*] One RN having died owing a certain sum to Government as *taqavi*, the revenue authorities attached a she-buffalo in the possession of DR on the ground that the latter was the heir of RN and that the buffalo was the property of the deceased. DR objected to the attachment, but his objection was overruled. He thereupon paid under protest the amount of *taqavi* claimed, and got back the buffalo, but meanwhile its calf had died owing to its separation from the mother. He then sued the Secretary of State for India in Council for refund of the money paid, for damages for the death of the calf, and for the price of the milk of which he had been deprived owing to the alleged wrongful attachment.

*Held*, that section 183 of the United Provinces Land Revenue Act applied, and the applicant was competent to maintain a suit against the Secretary of State, but only for the recovery of the amount paid and not for damages.

*Balwant Singh v. The Secretary of State for India*, I. L. R., 25 All., 527, followed. *Tulsa Kunwar v. Jageshar Prasad*, I. L. R., 28 All., 563, *The Secretary of State for India in Council v. Mahadei*, I. L. R., 19 All., 127, *The Secretary of State for India in Council v. Sukhdeo*, Weekly Notes, 1898 p. 173, and *Sahai v. Bindeshri Singh*, Weekly Notes, 1905, p. 237, referred to.

*Daya Ram v. The Secretary of State for India in Council*, I. L. R., 50 All. ... 354

ACTS—1887—VII (SUITS VALUATION ACT), SECTION 8, *See Act No. VII of 1870, section 7, clause (iv) (c)* ... 610.

ACTS—1887—IX (PROVINCIAL SMALL CAUSE COURTS ACT), SECTION 17—*Act No. IX of 1908 (Indian Limitation Act), schedule I, article 164—Application for re-hearing—Necessity for furnishing security within time.*] The giving of security within the time limited by article 164 of the first schedule to the Indian Limitation Act, 1908, is a necessary condition precedent to the entertainment of an application under section 17 of the Provincial Small Cause Courts Act, 1887, for the re-hearing of a suit which has been decreed *ex parte*. *Badhu Singh v. Panthu Singh*, 21 A. L. J., 173,

and Assan Mohammed Sahib v. Rahim Sahib, I. L. R., 43 Mad., 579, referred to.

Suraj Prasad v. Baldeo, I. L. R., 50 All. ... 254

**ACTS**—1887—IX (PROVINCIAL SMALL CAUSE COURTS ACT), SCHEDULE II, ARTICLE 42—*Jurisdiction—Suit by one co-mortgagor who had been obliged to pay the entire decree on the mortgage for reimbursement—Act No. IX of 1872 (Indian Contract Act), section 69.* Only such suits are barred by the Provincial Small Cause Courts Act as are actually covered by the words of the different articles and not those which are in substance like suits described in those articles.

A suit, therefore, for contribution brought by one co-mortgagor against another—not being a suit falling under section 95 of the Transfer of Property Act, 1882, but rather under section 69 of the Indian Contract Act, 1872—is not excluded from the jurisdiction of a Court of Small Causes. *Talaimand Singh v. Gobind Singh*, 13 A. L. J., 694, *Ganga Pande v. Amar Deo Pande*, 22 A. L. J., 855 and *Raza Husain v. Hasan Jan*, 13 A. L. J., 632, referred to.

Muhammad Ali v. Maktub-un-nissa, I. L. R., 50 All. ... 428

**ACTS**—1890—VIII (GUARDIANS AND WARDS ACT), SECTION 3—*Letters Patent, section 12—Guardian and minor—Joint Hindu family—Application by karta to be appointed guardian of minor members.* Neither the High Court nor the District Court will contemplate the appointment of a guardian of property, whether that guardian be the manager or no, in the case of a joint Hindu family, by virtue of any powers suggested to be conferred under the Guardians and Wards Act (VIII of 1890). *Jhabbu Singh v. Ganga Bishan*, I. L. R., 17 All., 529, *Ellen Ramm v. Charles Spencer*, 2 A. L. J., 81, *Jairam Lucmon, Petitioner*, I. L. R., 16 Bom., 634, *Jagannath Ramji, Petitioner*, I. L. R., 19 Bom., 96, and *Re Manilal Hurgovan*, I. L. R., 25 Bom., 353, referred to.

The High Court has jurisdiction, by virtue of clause 12 of the Letters Patent, in respect of the persons and properties of minors, but the High Court refused to exercise that jurisdiction in the case of a joint Hindu family, on the grounds of inexpediency and want of precedent.

In the matter of Govind Prasad, I. L. R., 50 All. ... 709

**ACTS**—1890—VIII (GUARDIANS AND WARDS ACT), SECTION 29—*Guardian and minor—Sanction of court to sale of minor's property—Condition subsequent imposed on guardian—Effect of guardian's failure to comply.* A District Judge, while granting permission to a certified guardian of a minor to transfer the minor's property, can impose conditions on the guardian; but a distinction must be drawn between a condition precedent and a condition subsequent imposed on the guardian. The only duty cast upon the transferee by law is that he must satisfy himself that the order sanctioning the transfer has been strictly complied with by the guardian up to the time of the execution of the deed of transfer and that no conditions precedent imposed by the order have been violated. If by the order sanctioning the transfer, the guardian and not the transferee is directed to do certain acts after the execution of the deed of transfer, the failure of the guardian to comply with that direction cannot affect the validity of the transfer. *Dyam Khan v. Sarat Chandra De*, 26 C. W. N., 218, and *Kunja Mal v. Ganri Shanker*, 3 A. L. J., 30, referred to. *Sri Thakur Kishori Ramanji Maharaj v. Duley Ram*, 22 A. L. J., 155, distinguished.

Subhan Ali v. Chittu, I. L. R., 50 All. ... 63

Acts—1890—VIII (GUARDIANS AND WARDS ACT), SECTION 30, See Mortgage ... 218

Acts—1890—VIII (GUARDIANS AND WARDS ACT), SECTIONS 33 AND 43—*Distinction between provisions of the two sections—Effect of guardian filing a suit on behalf of his ward without obtaining consent of court.*] The guardian of a minor Muhammadan girl, with the consent of the District Judge, entered into certain arbitration proceedings with the object of settling disputes between his ward and her brothers. An award was made and a decree in accordance therewith followed. Subsequently the girl married, being still a minor, and her husband was appointed her certified guardian. The husband then applied to the District Judge for permission to institute a suit on behalf of his wife to get the arbitration proceedings and the decree based thereon set aside. The Judge refused permission.

*Held* that no appeal lay from such order. But there was nothing in the Guardians and Wards Act to prevent a guardian from filing a suit on behalf of his ward without the consent of the Judge; only, in such a case the guardian would not have the protection afforded by sub-clause (3) of section 33 of the Act.

*Taskin Fatma v. Muhammad Munim Bakhsh, I. L. R., 50 All. ... 535*

Acts—1890—IX (INDIAN RAILWAYS ACT), SECTIONS 3 (4) AND 122—*"Railway"*—*Staff quarters not part of a "railway" within the meaning of section 3(4).*] Staff-quarters or any building of a residential character, though they may be on railway land, cannot be deemed to be a part of a "railway" within the meaning of section 3(4) of the Indian Railways Act, 1890.

Where a person was found playing cards at the house of a railway employee, situated between two railway lines, and there was no evidence to show that his entry on these premises was unlawful: *held*, that he could not rightly be convicted under section 122 of the Railways Act. *Margam Aiyar v. Mercer, 23 Indian Cases, 177, referred to.*

*Emperor v. Lodai, I. L. R., 50 All. ... 34*

Acts—1890—IX (INDIAN RAILWAYS ACT), SECTION 76—*Risk-note form B—Negligence—Burden of proof—Act No. IX of 1872 (Indian Contract Act), sections 151, 152 and 160.*] *Held*, on a construction of "risk-note form B" that, where a plaintiff is claiming damages from a railway company for the loss of entire packages belonging to one consignment, after the plaintiff has given evidence of the loss, it is for the defendant company to show that there has been no wilful neglect on their part, and by "wilful neglect" is meant the failure to take such precautions as a prudent man would take in respect of his own goods to provide against such loss or theft as a prudent man would contemplate as not merely possible, but as likely. *East Indian Railway Co. v. Nathmal Behari Lal, I. L. R., 39 All., 418, and East Indian Railway Co. v. Sri Ram Mahadeo, I. L. R., 46 All., 125, not followed. H. C. Smith, Ltd. v. Great Western Railway Co., [1922] 1 A. C., 179 distinguished.*

*Sheo Narain v. East Indian Railway, I. L. R., 50 All. ... 246*

Acts—1894—I (LAND ACQUISITION ACT), SECTION 23 (1) (i)—*Act (Local) No. VIII of 1919 (United Provinces Town Improvement Act), schedule, paragraph 10 (3)—Improvement Trust—Valuation of land acquired for purposes of a Trust.*] *Held* (1), that the correct interpretation of section 23, sub-section (1), clause (1) of the Land Acquisition Act, 1894, as amended by paragraph 10, clause (3) of the Schedule to the United Provinces Town Improvement

Act, 1919, is that the market-value of the land to be acquired is to be calculated exclusively in accordance with the use to which the land is being put on the date on which notice issues under section 29 or section 36 of the United Provinces Town Improvement Act; and (2) that where on such date the land to be acquired is not being put to any use, its market-value may be nil.

Secretary of State for India in Council *v.* Makhan Das,  
I. L. R., 50 All. ... .. 470.

ACTS—1899—II (INDIAN STAMP ACT), SECTION 57 (1) (b)—*Stamp—Agreement—Document containing an agreement to pay interest, but also containing items of a two-sided account.*] The first portion of a document, called a *sarkhat*, contained an agreement to pay interest, and was signed by two persons. Below their signatures was an entry of Rs. 500 as having been advanced to these persons on the same date, and then followed entries of a number of items on the credit and debit sides respectively, which were neither totalled nor signed. *Held*, on a reference by the Board of Revenue, that the document did not constitute more than one agreement and was properly stamped with a stamp of the value of eight annas.

In the matter of Shiam Sundar Lal, Shankar Lal,  
I. L. R., 50 All. ... .. 504

ACTS—1908—IX (INDIAN LIMITATION ACT), SECTION 10; SCHEDULE I, ARTICLE 62—*Limitation—Suit on behalf of an idol to recover money alleged to have been misappropriated by the mutawalli or manager.*] *Held* that a suit brought in the name of an idol installed in a Hindu temple to recover money alleged to have been wrongfully diverted to his own use by the manager or *mutawalli*, instead of having been employed in the service of the idol, is not a suit against a trustee in whom property has become vested in trust for any specific purpose, within the meaning of section 10 of the Limitation Act, but is a suit for money payable by the defendant for money received by the defendant for the plaintiff's use.

*Vidya Varuthi v. Balusami Ayyar*, I. L. R., 44 Mad., 831, followed.

*Jaisth Madho Achariyaji v. Thakur Sri Gath Ashram*  
*Narainji*, I. L. R., 50 All. ... .. 265

ACTS—1908—IX (INDIAN LIMITATION ACT), SECTIONS 19, 20, and 21,  
*See* Act No. IX of 1872, section 251 ... .. 932

ACTS—1908—IX (INDIAN LIMITATION ACT), section 20, *See* Civil Procedure Code, order XXI, rule 2 (3) ... .. 259

ACTS—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLE 12,  
*See* Civil Procedure Code, section 47; order XXI, rule 92 ... .. 686

ACTS—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLES 62 AND 97—*Sale—Price paid but property not delivered—Suit for return of price—Limitation.*] Where a purchaser pays the price of property which he has bought, but fails to obtain possession from the vendor, he has a right to sue for the return of the purchase-money, which commences from the date when delivery is asked for and refused. The suit is governed, as regards limitation, by either article 97 or article 62 of the first schedule to the Indian Limitation Act, 1908. *Mul Kunwar v. Chatter Singh*, I. L. R., 30 All., 402, *Arunachala v. Ramasami*, I. L. R., 38 Mad., 1171, referred to. *Janak Singh v. Walidad Khan*, 13 A. L. J., 669, and *Hanuman Ramat v. Hanuman Mandur*, I. L. R., 19 Cal., 123, followed.

*Kundan Lal v. Bisheshar Dayal*, I. L. R., 50 All. ... .. 95

**Acts—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLE 85—*Limitation—Principal and agent.***] Defendants, who were dealers in grain, employed the plaintiffs as commission agents and provided (as principals) to start with certain sums of money to serve as cover. Plaintiffs were then asked to make certain purchases in the market. The plaintiffs made the purchases, spent for the purpose what money of the defendants they had, and, when necessary, supplied the balance out of their own funds. The amount advanced by the defendants was credited to them in their account. The amount paid by the plaintiffs was debited to the defendants in the same account. Defendants were further debited with plaintiffs' commission and incidental charges. Later on, plaintiffs debited defendants' account with interest on the money they had spent on behalf of defendants. The next transaction might be one of purchase or one of sale of goods previously purchased. If it was a case of purchase, the same process of entry in the account would be gone through. If, however, there was a transaction of sale of goods previously purchased under the orders of defendants, plaintiffs sold the goods, credited defendants with the price fetched, and debited them with plaintiffs' commission and incidental charges. These transactions continued for about a year, and the year of account closed in October, 1920. On the 28th of March, 1923, plaintiffs sued to recover the balance which they alleged to be due to them on the account.

*Held*, that article 85 of schedule I to the Indian Limitation Act, 1908, applied, and the suit was not barred by limitation. *Sheo Partab Singh v. Brij Kishore*, 15 Indian Cases, 336, *Numberumal Chetty v. Kotayya*, 21 Indian Cases, 773, *Ram Pershad v. Harbanis Singh*, 6 C. L. J., 158, *Bank of Madras v. Kamta Prasad*, 1. L. R., 39 All., 33, *Velu Pillai v. Ghose Mahomed*, 1. L. R., 17 Mad., 293, *Madhav Motiram v. Jaiaram Sakharam*, 23 Bom. L. R., 540, *Watson v. Aga Mehmedee Sherazee*, L. R., 1 I. A., 346, and *Ratan Chand v. Asa Singh*, 62 Indian Cases, 593, referred to.

*Dau Dayal v. Piari Lal*, 1. L. R., 50 All. ... 645.

**Acts—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLES 91 AND 118, *See Hindu law*** ... 885.

**Acts—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLES 91 AND 120—*Limitation—Difference between a deed which is null and void and one which is good but voidable.***] Where a deed is *ab initio* null and void, there is no necessity for a person who considers himself aggrieved thereby to come to court promptly and have the deed actually cancelled or set aside, but where a deed is good but is voidable at the option of the party aggrieved, he must come to court within three years to have it set aside.

A suit for a declaration that a transaction embodied in a particular deed was, from its very inception, a sham transaction is to be distinguished from a suit for cancellation of the deed and does not fall within the purview of article 91 of the first schedule to the Indian Limitation Act, 1908. *Sangawa v. Huchangowda*, 1. L. R., 48 Bom., 166, *Petherpermal Chetty v. Muniandy Servai*, 1. L. R., 35 Calc., 551, and *Jagardeo Singh v. Phuljhari*, 1. L. R., 30 All., 375, followed.

*Muhammad Nazir v. Zulaikha Bibi*, 1. L. R., 50 All. ... 510.

**Acts—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLE 116—*Suit for damages for breach of contract in writing registered—Limitation—Contract evidenced by registered qabuliat only, without a patta.***] A suit for damages for breach of contract based upon a registered *qabuliat* signed by the lessee and accepted by

the lessor, but no *patta* having been executed, is governed as to limitation by article 116 of the first schedule to the Indian Limitation Act, 1908. *Apaji v. Nilkantha*, 3 Bom., L. R., 667, *Ambalavana Pandaram v. Vaguran*, I. L. R., 19 Mad., 52, *Kotappa v. Vallur Zamindar*, I. L. R., 25 Mad., 50, *Girish Chandra Das v. Kunja Behari Malo*, I. L. R., 35 Calc., 683, *Bouwang Raja Chellaphiroo Chowdhuri v. Banga Behari Sen*, 20 C. W. N., 408, and *Tricondas Cooverji Bhoja v. Gopinath Jiu Thakur*, I. L. R., 44 Calc., 759, referred to.

*Parbati v. Sarup Singh*, I. L. R., 50 All. ... 661

**Acts—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLES 120 AND 126—*Joint Hindu family—Remedies of son against alienation of family property by father—Limitation.*** Article 126 of the Indian Limitation Act, 1908, is based upon the principle that a son's knowledge of alienation by his father ordinarily arises when he sees the alienee in possession. In cases where the alienee never gets possession, no limitation can arise under article 126. In such cases the right of the son will amount merely to obtaining a declaration that the deed is invalid and the limitation prescribed for such a suit is that provided for by article 120.

*Held*, therefore, that article 126 does not apply to a suit by Hindu sons to set aside a mortgage made by the father in favour of persons who were already in possession under a previous mortgage. *Munia Goundan v. Ramasami Chetty*, I. L. R., 41 Mad., 650, referred to.

*Bindeshri Upadhiya v. Sital Upadhiya*, I. L. R., 50 All. 163

**Acts—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLE 132**  
*See Mortgage* ... 328

**Acts—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLE 132, *See Act No. IV of 1882, sections 74, 82, 95 and 100*** ... 569

**Acts—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLE 142, *See Civil Procedure Code, order XXI, rule 96*** ... 813

**Acts—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLES 142 AND 144—*Suit for possession of immovable property—Limitation—Adverse possession—Burden of proof.*** If a suit is for possession by a plaintiff who says that while he was in possession of the property he was dispossessed or has gone out of possession, then he must show possession within twelve years of the suit. But every other case in which a plaintiff claims possession of immovable property must be a case under article 144 of the Limitation Act, unless otherwise specially provided and in such a case limitation only begins to run where the defendant's possession becomes adverse. In such cases the onus lies on the defendant to plead and prove that his possession became adverse and continued adverse for more than twelve years before the suit. *Jai Chand Bahadur v. Girwar Singh*, I. L. R., 41 All., 669, and *Secretary of State for India in Council v. Chellikani Rama Rao*, I. L. R., 39 Mad., 617, followed.

*Ram Surat Singh v. Badri Narain Singh*, I. L. R., 50 All. ... 89

**Acts—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLE 164, *See Act No. IX of 1887, section 17*** ... 264

**Acts—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLE 182—*Execution of decree—Limitation—Application for substitution of names—“Step in aid of execution”—Civil Procedure Code, order XXI, rule 16; order XXII, rule 1.*** An application for substitution of names is a step in aid of execution. *Pitani Singh v. Tota Singh*, I. L. R., 29 All., 301, followed. *Annamalai Mudaliar v. Ramier*, I. L. R., 31 Mad., 234, referred to.



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Rule 16 of order XXI applies only to substitution along with execution and there is no bar under any of the rules in schedule I of the Code of Civil Procedure to substitution of names by an executing court when an execution proceeding is already pending.

Mohan Singh v. Jagat Singh, I. L. R., 50 All. ... 621

**Acts—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLE 182—**  
*Execution of decree—Purchase by decree-holder—Application by decree-holder qua auction-purchaser for possession—Step in aid of execution—Limitation—Civil Procedure Code, order XXI, rule 95.] Held that an application under order XXI, rule 95, of the Code of Civil Procedure by an auction-purchaser to recover possession of the property purchased cannot be counted as a proceeding in execution and a step in aid of execution by reason of the fact that the auction-purchaser happens to be also the decree-holder. Bhugwati v. Banwari Lal, I. L. R., 31 All., 82, followed. Babu Ram v. Piari Lal, I. L. R., 41 All., 479, and Moti Lal v. Makund Singh, I. L. R., 19 All., 477, referred to.*

Mohsin Raza Khan v. Haidar Bakhsh, I. L. R., 50 All. 670

**Acts—1908—IX (INDIAN LIMITATION ACT), SCHEDULE I, ARTICLE 183,**  
*See Civil Procedure Code, section 144; order XLV, rule 15 ... 767*

**Acts—1908—XVI (INDIAN REGISTRATION ACT), SECTIONS 17 AND 49, See**  
*Act No. IV of 1882, sections 4 and 54 ... 986*

**Acts—1908—XVI (INDIAN REGISTRATION ACT), SECTION 17 (b)—Regis-**  
*tration—Compromise—Recital of agreement between the parties to a mutation case coupled with a request that the property in suit might be partitioned in a particular way.] Held, following the principles laid down in Satrohan Lal v. Nageshwar Prasad, 19 Oudh Cases, 75; 35 Indian Cases, 770, Bakhtawar v. Sundar Lal, I. L. R., 48 All., 213, and Mahomed Musa v. Aghore Kumar Ganguly, I. L. R., 42 Calc., 801, that a document filed in a mutation case which merely set forth that the parties had settled the matters in dispute between them and that they desired that the property in suit should be partitioned in such and such a manner was not a document the registration of which was necessary.*

Gharib Rai v. Mukh Lal Rai, I. L. R., 50 All. ... 31

**Acts—1908—XVI (INDIAN REGISTRATION ACT), SECTION 47, See Act**  
*(Local) No. XI of 1922, section 2 ... 125*

**Acts—1912—IV (INDIAN LUNACY ACT), SECTION 62, See Civil Procedure**  
*Code, sections 115 and 151; order XXXII, rule 15 ... 335*

**Acts—1913—VII (INDIAN COMPANIES ACT), SECTIONS 18 AND 28,**  
*See Act No. IX of 1872, section 78 ... 695*

**Acts—1913—VII (INDIAN COMPANIES ACT), SECTIONS 152, 179 AND 234—**  
*Company—Winding up—Official liquidator—Power to refer to arbitration—Civil Procedure Code, schedule II.] An official liquidator has no power to refer to arbitration under the second schedule to the Code of Civil Procedure any matter in dispute in which the company that he represents is interested.*

Dehra Dun Mussoorie Electric Tramway Company, Ltd.,  
*(In liquidation). In the matter of—, I. L. R., 50*  
 All. ... 867

**Acts—1913—VII (INDIAN COMPANIES ACT), SECTION 171—Company—**  
*Liquidation—Decree illegally obtained against company in liquidation—Refusal of liquidator to pay.] A company (bank) went into voluntary liquidation, and two liquidators were appointed, but*

one of them refused to accept the office. On July 17, 1924, an order was passed by the High Court directing that the liquidation be continued as a liquidation under the supervision of the court. On May 21, 1926, this order was superseded by a further order directing that the liquidation should be by the court. On July 10, 1924, certain creditors brought a suit against two of the directors, the manager, and the bank—described as in voluntary liquidation—through one of the liquidators, and obtained a decree (October 31, 1924) against all the four defendants. The decree was satisfied in part by the two directors in their personal capacity. Later the balance of the decree was claimed against the official liquidator, who refused to pay.

*Held*, that the liquidator was right in refusing, inasmuch as the decree was not binding on the company in liquidation, first, because it was in contravention of section 171 of the Indian Companies Act, 1913, and, secondly, because the liquidator, after his co-liquidator against whom it was framed had refused to act, had not authority to act as a liquidator.

The bar imposed by section 171 of the Indian Companies Act, 1913, cannot be waived by a liquidator. *Narasimham v. Subramaniam*, [1927] A. I. R., (Mad.), 201, referred to.

In the matter of the Allahabad Trading and Banking Corporation, Ltd., I. L. R., 50 All. ... 149.

ACTS—1913—VII (INDIAN COMPANIES ACT), SECTIONS 179 AND 215—*Liquidator—Civil Procedure Code, order XXI rule 72—Sales in execution of decrees in favour of the company in liquidation—Jurisdiction to grant permission to the liquidator to bid.*] The Judge in winding up has no jurisdiction to make an order giving a liquidator permission to bid at sales held in execution of mortgage decrees passed in favour of a company in liquidation. Such jurisdiction is vested under the Code in execution courts.

On the other hand, under sections 179 and 215 of the Companies Act, a Judge of the High Court exercising winding up jurisdiction can sanction any reasonable step which the liquidator may desire to take in the interest of the winding up, in which the primary concern is the interest of the creditors and the shareholders, and therefore has power to sanction his applying to the execution court, either in a particular case or generally in all cases in which he thinks it desirable, for leave to bid as a decree-holder under order XXI, rule 72 of the Code of Civil Procedure.

Bank of Upper India, Ltd., *Meerut v. Fanny Skinner*, I. L. R., 50 All. ... 173.

ACTS—1913—VII (INDIAN COMPANIES ACT), SECTION 215—*Company—Liquidation—Power of court in a voluntary liquidation to stay execution of decree against the company.*] *Held*, on a construction of section 215 of the Indian Companies Act, 1913, that the court has power, in a voluntary liquidation, to stay further proceedings in execution of decrees obtained against the company prior to the resolution for voluntary liquidation, though that is a power which in a compulsory liquidation does not exist, because the statute itself forbids execution being taken out. *Anglo-Baltic and Mediterranean Bank v. Barber and Co.*, [1924] 2 K. B., 410, and *Black and Co's case*, 8 Ch. App., 254, referred to.

*In re the Sri Yogashram Pharmacy, Ltd.*, (in liquidation), I. L. R., 50 All. ... 482.

ACTS—1914—VIII (INDIAN MOTOR VEHICLES ACT), SECTIONS 6, 8, 9 AND 16—*United Provinces Motor Vehicles Rules, 1924, rules 20, 21, and 24—Licence—Permit—Failure to produce permit—Power of district authority to prescribe route along which a public motor*

*vehicle shall ply for hire.] Held, (1) that there is no power given to the "district authority" either by the Indian Motor Vehicles Act, 1914, or by the rules framed thereunder, which enables that authority to prescribe the route along which a public motor vehicle authorized to ply for hire shall run, and (2) that there is no provision in either the Act or the rules which renders punishable the non-production of a "permit" issued under rule 24, as distinct from a licence prescribed by section 6 and rules 20—22.*

Emperor v. Hasan Ahmad, I. L. R., 50 All., ... 876

ACTS—1920—V (PROVINCIAL INSOLVENCY ACT), SECTIONS 41, 44 and 34—*Insolvency—Surety—Effect of order of discharge on the claim of a person who had gone surety for the insolvent and had been compelled to pay.] K was surety for the payment of a debt due by G to D. G applied to be declared insolvent and in due course G was discharged. D then sued K and got a decree against him. Thereafter K sued G for recovery of the amount which he had been compelled to pay.*

*Held that the order of discharge was a bar to the suit. In re Blackpool Motor Car Company, Ltd., [1901] 1 Ch., 77, followed.*

Gangadhar v. Kanhai, I. L. R., 50 All. ... 606

ACTS—1920—XIV (CHARITABLE AND RELIGIOUS TRUSTS ACT), SECTION 3—*Application for particulars relating to a trust—"Person interested in a trust".] Held that, in regard to a trust the object of which was the maintenance of a public dharamshala in a certain city, a person who was a resident of that city, a Brahman by caste, and secretary of the local Dharm Asthan Sudhar Committee, was as person interested in the trust within the purview of section 3 of the Charitable and Religious Trusts Act, 1920, and therefore entitled to apply to the District Judge to call upon the manager of the dharamshala to furnish certain particulars as specified in the Act.*

Lakhpat Rai v. Durga Prasad, I. L. R., 50 All. ... 830

ACTS—1922—XI (INDIAN INCOME-TAX ACT), SECTIONS 2 (1) (a), 3 AND 4—*"Agricultural income"—Money-lender taking a usufructuary mortgage of agricultural land and immediately leasing it back to the mortgagor—Rent not liable to income-tax.] If a person carrying on a money-lending business lends money in the course of such business on the security of lands of which he takes a usufructuary mortgage and if he immediately leases those lands back to the mortgagor with a stipulation for fixed annual payments, which amount to a definite percentage on the sum advanced, held, that these annual payments should be excluded from the assessment of the profits and gains of his business, as being "agricultural income" within the meaning of section 2(1)(a) of the Indian Income-Tax Act, 1922. Partington v. Attorney-General, L. R., 4 E. and I. App., 100, referred to.*

In the matter of Makund Sarup, I. L. R., 50 All. ... 495

ACTS—1922—XI (INDIAN INCOME-TAX ACT), SECTION 4—*Income-tax—"Agricultural income"—Stone quarries—Profits not exempt from assessment to income-tax because they have already been taken into account in the assessment of land revenue.] There is no provision in the Income-Tax Act which exempts from liability to assessment profits from stone quarries, not being agricultural income, which have already been taken into account in assessing land revenue.*

In the matter of Shib Lal, Ganga Ram, I. L. R., 50 All. ... 98

ACT No. XI OF 1922 (INDIAN INCOME-TAX ACT), SECTIONS 22 AND 23—*Income-tax—Notice under section 22(4) served on assessee after he has made a return—Non-compliance—Powers of income-tax officer.*] If an assessee has made a return in compliance with a notice under section 22 (2) of the Indian Income-tax Act, 1922, and thereafter a notice has been served upon him under section 22 (4) and the assessee has failed to comply with that notice, the Income-tax officer is entitled to make an assessment under section 23(4) on account of that failure and he is not bound to proceed under section 23 (3). *Brijraj Ranglal v. Commissioner of Income-tax*, [1927] A. I. R., (Pat.), 390, dissented from.

In the matter of Chandra Sen Jaini, I. L. R., 50 All. ... 589

ACTS—1923—X (INDIAN PAPER CURRENCY ACT), SECTION 25—*Promissory note—Note framed as payable to lender or order not within the prohibition of the Act.*] Held, that a document which consisted of a promissory note and a receipt, and in the latter the promissory note was described as “*indultala*” meaning “on demand”, and in the note the words were that the money would be paid “on demand to him, that is, to the lender, or to whomsoever he orders it to be paid”, was not obnoxious to the provisions of section 25 of the Indian Paper Currency Act, 1923. *Chidambaram Chettiar v. Ayyasami Thevan*, I. L. R., 40 Mad., 858, and *Jetha Parkha v. Ramchandra Vithoba*, I. L. R., 16 Bom., 689, referred to

Ajudhia Prasad v. Bikhmath, I. L. R., 50 All. ... 764

ACTS—1923—X (INDIAN PAPER CURRENCY ACT), SECTION 25—*Promissory note payable on demand to lender or bearer or to order—Note invalid—Question whether a suit on an independent obligation will lie and to what extent the note may be used as evidence.*] Held that a promissory note payable on demand to the lender or the bearer or to order offends against the provision of section 25 of the Paper Currency Act, 1923, and therefore cannot form the basis of a suit.

Held, by BOYS and KENDALL, JJ., that the payee can, however, sue on the basis of any obligation, whether antecedent to or arising simultaneously with the execution of such a promissory note, independently of the execution of the promissory note. *Hedayat Ali Beg v. Nga Kyang*, 24 Indian Cases, 721, *Shanmuganatha Chettiar v. Srinivasa Aiyar*, 35 Indian Cases, 219, *Chidambaram Chettiar v. Ayyasami Thevan*, I. L. R., 40 Mad., 585, *Nachimuthu Chetty v. Andiappa*, 42 Indian Cases, 706, and *Natarajulu Naicker v. Subramanian Chettiar*, I. L. R., 45 Mad., 778, referred to. Held, also, that where there is other evidence outside the promissory note of the obligation sued upon, such a promissory note would be admissible as evidence to be read in conjunction with that other evidence to arrive at a decision as to whether the independent obligation is proved. Where there is no other evidence, while the promissory note is still admissible in evidence, there can be no decree on the basis of it alone.

Mian Bakhsh v. Bodhiya, I. L. R., 50 All. ... 899

ACTS—1924—VI (CRIMINAL TRIBES ACT), SECTIONS 20 AND 22—*Criminal tribe—Member of, failing to report—Summary trial—Criminal Procedure Code, section 260.*] One Bihari Bhar was tried summarily by a Magistrate of the first class for an offence under “section 22 of Act VI of 1924,” and was convicted and sentenced to three months’ rigorous imprisonment. He appealed from jail, and the Sessions Judge acquitted him on the sole ground that the offence could not be tried summarily.

*Held*, on appeal by the Local Government against this order of acquittal, (1) that the Magistrate ought to have recorded specifically the precise offence, amongst those mentioned in section 22 of the Criminal Tribes Act, with which the accused was charged and of which he was convicted, (2) that the offence which the accused had committed was the omission to comply with clause (b) of division (C) of rule 8 framed by the Local Government under section 20 of the Act, and (3) that, as this offence was punishable with a maximum sentence of six months' rigorous imprisonment, the Sessions Judge was wrong in acquitting him merely because the trial was a summary one.

Emperor v. Bihari Bhar, I. L. R., 50 All. ... 718

ACTS (LOCAL)—1901—II (AGRA TENANCY ACT), SECTIONS 95 AND 167—*Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 42—Suit for a declaration that defendant is a trespasser—Effect of previous decision of a revenue court as to defendant's status.*] In proceedings under section 42 of the United Provinces Land Revenue Act, 1901 to which the zamindar was a party, a revenue court decided that the defendant was a non-occupancy tenant, and the zamindar made no appeal against this decision. Subsequently, the zamindar sued in a civil court for a declaration that the defendant was a trespasser. *Held*, that the suit could not be maintained, the previous finding of the revenue court that the defendant was a non-occupancy tenant being binding upon the plaintiff. *Jagannath v. Balwant Singh*, I. L. R., 44 All., 692, referred to.

Sheoambar Singh v. Sheoambar Singh, I. L. R., 50 All. 55

ACTS (LOCAL)—1901—II (AGRA TENANCY ACT), SECTIONS 164 AND 201 (3)—*Suit for profits—Presumption—"Shall presume."*] If the conditions laid down in section 201(3) of the Agra Tenancy Act, 1901, are fulfilled, the presumption raised is irrebuttable and conclusive, and the court is not entitled to go into any such question as whether the plaintiff and defendant are members of the same joint family of which the defendant is the *karta*. *Durga Prasad v. Hazari Singh*, I. L. R., 33 All., 799, and *Sheo Narain v. Bela Rai*, I. L. R., 44 All., 616, followed.

Girdhari Lal v. Gobind Rai, I. L. R., 50 All. ... 25

ACTS (LOCAL)—1901—II (AGRA TENANCY ACT), SECTIONS 164(2), 165 AND 166—*Lambardar and co-sharer—Liability of representative of deceased lambardar for the negligence or misconduct of his predecessor.*] A plaintiff can, in a suit against the lambardar, prove negligence or misconduct with a view to getting a decree against the lambardar personally or, in a suit against a holder of the assets of the lambardar, can prove the negligence or misconduct of the deceased lambardar in order to get a decree against the estate of the deceased lambardar in the hands of such holder.

The words "plaintiff" and "defendant" as used in sub-section (2) of section 164 are merely synonyms for the "co-sharer" and "lambardar" referred to in sub-section (1), just as they are used in section 165. *Dip Singh v. Ram Charan*, I. L. R., 29 All., 15, and *Bharat Singh v. Tej Singh*, I. L. R., 40 All., 246, referred to.

Haidari Begam v. Sriman Thakur Lakshmi Narainji Maharaj, I. L. R., 50 All. ... 107

ACTS—(LOCAL)—1901—II (AGRA TENANCY ACT), SECTION 165—*Lambardar and co-sharer—Suit by lambardar against co-sharer for profits of sir or khudkasht in excess of his share.*] A lambardar cannot sue as lambardar one or more co-sharers for any

sum due from them by reason of their holding as *sir* or *khud-kasht* excess land. *Bishambhar Nath v. Bhullo*, I. L. R., 34 All., 98, followed. *Ganga Singh v. Ram Sarup*, I. L. R., 38 All., 223, dissented from. *Kundan Lal v. Basant Rai*, 75 Indian Cases, 330, referred to.

A suit under section 165 of the Tenancy Act must be one for accounts primarily and it must be shown by figures that the other co-sharers have no claim to the excess which the particular co-sharer, who is plaintiff, is claiming. The fact that the plaintiff may have paid off another co-sharer out of his own pocket will not give the plaintiff a right to recover the money so paid from a third co-sharer.

- Koka v. Chunni*, I. L. R., 50 All. ... 342
- ACTS (LOCAL)—1901—III (UNITED PROVINCES LAND REVENUE ACT), SECTION 42, *See* Act (Local) No. II of 1901, sections 95 and 167 ... 55
- ACTS (LOCAL)—1901—III (UNITED PROVINCES LAND REVENUE ACT), SECTION 99, *See* Regulation No. II of 1925, article 4 ... 440
- ACTS (LOCAL)—1901—III (UNITED PROVINCES LAND REVENUE ACT), SECTIONS 107 and 111—*Partition—Objections based on adverse possession overruled as frivolous—Question of proprietary title—Appeal.*] In a suit for partition, whether a question of proprietary title is raised or not depends on the exact objections raised by an objector, and when an objector claims to be in possession of any particular plot of land by adverse possession, that certainly raises a question of title.
- Where an Assistant Collector rejected objections taken to the partition, on the ground that they were, on the face of them, frivolous, it was held, that he must be deemed to have chosen to decide the question raised in the objections on the merits, and therefore an appeal lay to the District Judge.
- Ram Narain v. Jagan Nath Prasad*, I. L. R., 38 All., 115, and *Bhagwan Dut v. Brij Bhukan*, 75 Indian Cases, 868, followed. *Nand Ram v. Brahmikhayal*, 22 Indian Cases, 949, and *Muhammad Nasar-ullah Khan v. Muhammad Ishaq Khan*, I. L. R., 32 All., 523, referred to.
- Ram Prasad v. Mithan Lal*, I. L. R., 50 All. ... 107
- ACTS (LOCAL)—1901—III (UNITED PROVINCES LAND REVENUE ACT), SECTIONS 111 AND 112—*Appeal—Civil or Revenue court—Question of proprietary title—Right of co-sharer to hold in severalty.*] The right of a co-sharer to hold in severalty, if disputed, involves a question of a proprietary title, within the meaning of sections 111 and 112 of the United Provinces Land Revenue Act, 1901.
- Tulsi Ram v. Gate Ram Rai*, Weekly Notes, 1904, p. 225, *Muhammad Nazarullah Khan v. Muhammad Ishaq Khan*, I. L. R., 32 All., 523, *Ram Narain v. Jagan Nath Prasad*, I. L. R., 38 All., 115, and *Parsidhan Rai v. Dhanechar Rai*, 86 Indian Cases, 1033, referred to.
- Balwant Singh v. Partap Singh*, I. L. R., 50 All. ... 193
- ACTS (LOCAL)—1903—II (BUNDELKHAND ALIENATION OF LAND ACT), SECTIONS 111(a) AND 233 (b), *See* Civil Procedure Code, order XXII, rule 4 (3) ... 550
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*suit for pre-emption.*] Plaintiff claimed a right on the strength of a custom recorded in the *wajib-ul-arz* to pre-empt certain property, situated in Bundelkhand and sold by a co-sharer in the *mahal* to a non-co-sharer. Both the vendor and the vendee were members of an agricultural tribe. The plaintiff was not; but he had obtained the Collector's sanction to bring suits to pre-empt under section 16A of the Bundelkhand Alienation of Land Act of 1903 as amended by Act No. IV of 1915.

*Held*, that the plaintiff had lost all right of pre-emption, not only because, after the passing of section 3 of the Pre-emption Act, 1922, he could not claim to pre-empt on the basis of custom, apart from the provisions of the Act itself, but also because, the land being in Bundelkhand, he was barred from any right to pre-empt, which he would otherwise have had under section 12 of the Pre-emption Act, by section 7 of that Act. *Suraj Bhan v. Somwaripuri*, I. L. R., 37 All., 662, referred to.

*Phul Chand v. Ram Nath*, I. L. R., 50 All. ... 430

ACTS (LOCAL) 1912—VI (UNITED PROVINCES PREVENTION OF ADULTERATION ACT), SECTIONS 4, 12 AND 15—*Sale of adulterated ghi—Prosecution duly sanctioned, but complaint not lodged within time—Jurisdiction.*] *Held* on a construction of sections 12 and 15 of the United Provinces Prevention of Adulteration Act, 1912, that a conviction under section 4 was not invalidated by reason of the complaint not having been preferred within the time limited, although, had the accused refused to attend in answer to the summons issued against him, he could not have been prosecuted under section 174 of the Indian Penal Code.

*Emperor v. Ram Chand*, I. L. R., 50 All. ... 853

ACTS (LOCAL)—1919—VIII (UNITED PROVINCES TOWN IMPROVEMENT ACT), schedule, paragraph 10, *See* Act No. I of 1891, section 23 (1) (i) ... 470

ACTS (LOCAL)—1922—XI (AGRA PRE-EMPTION ACT), SECTIONS 1 AND 3—*Pre-emption—Customary right of pre-emption within a municipal area.*] Inasmuch as any area included within the limits of a municipality is expressly excluded from the operation of the Agra Pre-emption Act, 1922, it follows that a custom of pre-emption prevailing in such area remains unaffected.

*Sri Ram v. Jwala Shankar*, I. L. R., 50 All. ... 178

ACT (LOCAL)—1922—XI (AGRA PRE-EMPTION ACT), SECTION 2—*Act No. XVI of 1903 (Indian Registration Act), section 47—Registration—Applicability of the Agra Pre-emption Act, 1922, to a sale-deed executed before but registered on the date when the Act came into force.*] *Held* that the Agra Pre-emption Act, 1922, did not apply to a sale-deed which was executed on the day previous to its coming into operation, though registered on the latter date. *Sarju Prasad v. Bhagwati Prasad*, 23 A. L. J., 373, and *Kalyanasundaram Pillai v. Karuppa Mooppanar*, I. L. R., 50 Mad., 193, referred to.

*Muhammad Bashir Khan v. Kulsum Bibi*, I. L. R., 50 All. ... 125

ACTS (LOCAL)—1922—XI (AGRA PRE-EMPTION ACT), SECTIONS 3, 7 AND 12, *See* Act (Local) No. II of 1903, section 16A ... 430

ACTS (LOCAL)—1922—XI (AGRA PRE-EMPTION ACT), SECTIONS 4(3) AND 16—*Pre-emption—Claim based on the Act and partly on the Muhammadan law—Effect of failure of one ground—"Land."*]

The property which was the subject of a suit for pre-emption consisted of a zamindari share and also a one-third share in a

house and a sugarcane pressing mill. The plaintiff sued to pre-empt the zamindari under the provisions of the Agra Pre-emption Act, 1922, and the share in the house and the mill on the basis of the Muhammadan law. She failed in her claim under the Muhammadan law because the necessary demands had not been properly made.

*Held*, that the whole claim should be dismissed, section 16 of the Agra Pre-emption Act not having made any change in the law in this respect.

*Muhammad Wilayat Ali Khan v. Abdul Rab*, I. L. R., 11 All., 108, *Mujibullah v. Umad Bibi*, I. L. R., 21 All., 119, *Abdul Rahman v. Hedayat-ullah*, 12 A. L. J., 88, and *Puech v. Aziz Fatima Bibi*, 19 A. L. J., 107, followed.

*Aliter*, if the claim for pre-emption of the house and the sugarcane pressing mills was based on the plaintiff's right to pre-empt these properties under the Act as being attached to the land upon which they stood, and if the whole of such land was included in the sale.

*Abdul Khan v. Shakira Bibi*, I. L. R., 50 All. ... 349

ACTS (LOCAL)—1922—XI (AGRA PRE-EMPTION ACT), SECTION 4 (10—*Pre-emption—“Sale”—Transfer under a compromise decree.*] No suit for pre-emption will lie where a transfer of property is brought about by a decree, although that decree may be based on a compromise. *Intizar Husain v. Jamna Prasad*, 1 A. L. J., 247, and *Abdur Razzaq v. Muntaz Husain*, I. L. R., 25 All., 334, referred to.

*Paras Ram v. Neksai*, I. L. R., 50 All. ... 454

ACTS (LOCAL)—1922—XI (AGRA PRE-EMPTION ACT), SECTION 12 (3)—*Pre-emption—Competition between sister and uncle—“The common ancestor.”*] In respect of a suit for pre-emption under the Agra Pre-emption Act, 1922, and considered as heirs according to the Muhammadan law, there is no difference in degree between a sister and an uncle of the vendor; but as regards descent from the common ancestor the sister is the nearer, for “the common ancestor” must be construed as “the nearest common ancestor.”

*Held* also, that a pre-emptor who is only of equal degree with the vendee cannot claim to have the property sold divided between himself and the vendee. *Jagrup Singh v. Indrasan Pande*, I. L. R., 47 All., 910, and *Ishwar Upadhiya v. Mahesh Dat Upadhiya*, I. L. R., 48 All., 317, referred to.

*Ashraf Bibi v. Muhammad Abdul Raof*, I. L. R., 50 All. 404

ACTS (LOCAL)—1922—XI (AGRA PRE-EMPTION ACT), SECTIONS 13 AND 20—*Pre-emption—Successful suit by one of several rival pre-emptors no bar to suit by others for a share of the property pre-empted.*] Where there are several possible pre-emptors of equal degree, the fact that one has instituted a successful suit for pre-emption is no bar to the others—if they are within limitation—suing for a proportionate share in the property pre-empted. *Raj Narain Rai v. Dunia Pande*, I. L. R., 32 All., 310, followed.

*Kundan Lal v. Anar Singh*, I. L. R., 50 All. ... 61

ACTS (LOCAL)—1926—III (AGRA TENANCY ACT), SECTIONS 44, 230 AND 273—*Suit for ejectment of a trespasser by proprietor of agricultural land—Jurisdiction—When suit entertainable by a civil court.*] Plaintiff, as proprietor of an agricultural holding, brought a suit in the Munsif's court for the ejectment of defendant on the ground that the latter was a trespasser. Defendant pleaded that he was a tenant of the plaintiff, that rent had been accepted from him and that under section 44 of the Agra Tenancy Act, 1926, the



suit was not entertainable in a civil court. *Held*, on a reference under section 267 of the Act, that the suit fell within the four corners of section 273 and was entertainable by the civil court. But if the court was satisfied that the suit related to an agricultural holding, it must frame an issue on the defendant's plea of tenancy and submit the record to the appropriate revenue court for the decision of that issue only, and ultimately decide the suit accepting the finding of the revenue court on the issue so referred.

The jurisdiction of the civil court to refer such an issue is expressly provided by section 273, and is not intended to be barred by the provisions of section 230.

Section 44 was probably enacted in order to allow facilities to an owner of agricultural land in seeking a speedy remedy through the revenue court if the defendant has taken possession without his consent and if he is prepared to accept damages up to the maximum prescribed. *Debi Sahai v. Daulat*, 8 L. R., Revenue, 104, referred to.

Muhammad Muslim v. Maharania, I. L. R., 50 All. ... 130

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| CIVIL PROCEDURE CODE, SECTION 2 (11); ORDER XXII, RULE 5— <i>Abatement of appeal—"Legal representative"—Effect of order bringing a person on the record as legal representative of a deceased appellant.</i> When, by an order which has become final, a certain person's name has been brought on to the record of an appeal as the legal representative of the deceased appellant, it is not open to the respondent to urge that the appeal has abated because some other heirs have been left out.  |       |
| Muhammad Zafaryab Khan v. Abdul Razzaq Khan,<br>I. L. R., 50 All., ... ..  | 857   |
| CIVIL PROCEDURE CODE, SECTION 11— <i>Res judicata—"Might and ought"</i> First suit for possession based on title—Second suit for possession as mortgagee—Two courts of different grades—Second suit comprising property claimed in first suit as well as other claims against other defendants.] R mortgaged with possession a certain property to M. After R's death, F, who had inherited a two-fifths share in the property, sold without authority the entire property to the mortgagee M. T, who had inherited a one-fifth share, brought a suit in the Munsif's court for possession of her share. Her title was proved and the suit was decreed, M not having raised the defence that in any case he was entitled to retain possession as usufructuary mortgagee. Thereafter M's name was removed from the revenue records as a mortgagee, and he brought a suit in the Subordinate Judge's court against T and the other heirs of R, for recovery of possession as mortgagee over a three-fifths share of the pro- |       |

party (excluding the two-fifths share of *P*, of which *M* had become full owner).

*Held*, that so far as *T* and her one-fifth share were concerned, the suit was barred by the principle of *res judicata*.

*Tamiz-un-nissa Bibi v. Syed Muhammad Husain*,  
I. L. R., 50 All. ... 306

CIVIL PROCEDURE CODE, SECTION 11—*Res judicata*—*Mutual and common account*—*Suit by one party on the account followed by a decree—Second and similar suit by the other party not maintainable.*] *A* and *N* were in the habit of purchasing goods of a similar nature from each other, and of these transactions one mutual account was kept. On this account *A* sued *N* and obtained an *ex parte* decree. *N* tried to get this decree set aside, but failed. He then sued *A* on the same account for the same year, but beginning and ending about a month earlier.

*Held*, that the suit would not lie, being barred by the principle of *res judicata*. *Hook v. Administrator-General of Bengal*, I. L. R., 48 Calc., 499, referred to.

*Nizam-ud-din v. Ahmad Bhai & Co.*, I. L. R., 50 All. ... 28

CIVIL PROCEDURE CODE, SECTIONS 11, 96 AND 100; ORDER XLI, RULE 35—*Res judicata*—*Cross-appeals from a decree in one suit disposed of by one judgement followed by two separate decrees—Appeal to High Court against one decree only—Act No. XVIII of 1879—(Legal Practitioners Act), section 28—Oral agreement as to setting off fees to be earned by the debtor against amount due on a promissory note.*] Plaintiff sued to recover Rs. 3,270-15-0 as due on a promissory note executed by defendant. The defence was that owing to a certain collateral agreement nothing at all was due. The trial court found for the plaintiff to the extent of Rs. 1,721-9-2. Both sides appealed, the plaintiff claiming the full amount claimed in the plaint; and the defendant again denying his liability *in toto*. These two appeals were decided by one judgement, which reduced the amount payable to the plaintiff to Rs. 1,145, and in consequence dismissed the plaintiff's appeal. Two separate decrees were, however, prepared, and the plaintiff appealed against the decree passed in his own appeal, but not against the decree passed in the defendant's appeal. *Held*, that the appeal was not barred by the principle of *res judicata*.

The defence in the suit was that there was an oral agreement between the parties that the amount ostensibly due on the promissory note should not be paid in cash, but should be, so to speak, "worked off" by professional service to be rendered by the defendant, who was a pleader. *Held*, that in view of the distinct provisions of section 28 of the Legal Practitioners Act, 1879, this defence was not open.

*Ghansham Singh v. Bhola Singh*, I. L. R., 45 All., 506, *Damodar Das v. Sheoram Das*, I. L. R., 29 All., 730, *Lalla Raghoobins Sahoy v. Musannat Asloo* 20, W. R., 294, *Muhammad Sulaiman Khan v. Muhammad Yar Khan*, I. L. R., 11 All., 267, *Mariam-nissa Bibi v. Joynab Bibi*, I. L. R., 33 Calc., 1101, *Panchanada Velan v. Vaithinatha Sastrial*, I. L. R., 29 Mad., 323, *Zaharia v. Debia*, I. L. R., 33 All., 51, and *Ram Kirpal v. Rup Kuari*, I. L. R., 6 All., 269, referred to.

*Nannu Prasad v. Nazim Husain*, I. L. R., 50 All. ... 517

CIVIL PROCEDURE CODE, SECTIONS 13 AND 14—*Suit on a foreign judgement—"Judgement given on the merits of the case"—Assertion by defendant that he was not residing within the jurisdiction when the suit was filed—Burden of proof.*] In a suit

brought in the Rampur State the judgement, after giving a summary of the plaint, ran as follows :—"The defendant, notwithstanding due service of summons, has not contested the suit. The document is registered. The failure of the defendant to contest the suit amounts to an admission of the plaintiff's claim. Accordingly the plaintiff's suit is decreed."

*Held*, on suit brought by the plaintiff on this judgement in a British Indian Court, (1) that the judgement of the Rampur court was a judgement "on the merits of the case" within the meaning of section 13 (b) of the Code of Civil Procedure; (2) that, a certified copy of the judgement having been produced by the plaintiff, the British Indian Court was bound to presume that the judgement was pronounced by a court of competent jurisdiction; and, if the defendant wished to get rid of that presumption, on the allegation that he was not residing in Rampur on the date when the suit was filed, it was for him to prove that he was not, and not for the plaintiff to prove that he was.

*Keymer v. Visvanatham Reddi*, I. L. R., 40 Mad., 112, *Cole v. Harper*, I. L. R., 41 All., 521, and *Kassim Mamoojee v. Isuf Mahomed Sulaiman*, I. L. R., 29 Calc., 509, referred to.

*Ishri Prasad v. Sri Ram*, I. L. R., 50 All. ... 270

CIVIL PROCEDURE CODE, SECTION 24(4)—*Transfer of Small Cause Court suit to court not having Small Cause powers—Appeal.* During the pendency of a suit before a Subordinate Judge having Small Cause Court powers, the Subordinate Judge was transferred and was replaced by another Subordinate Judge who had not such powers. The suit was then transferred, by order of the District Judge, first to the Munsif, and then to the Additional Munsif, by whom it was tried. *Held* that section 24(4) of the Code of Civil Procedure applied and no appeal lay from the decision of the Additional Munsif. *Kauleshar Rai v. Dost Muhammad Khan*, I. L. R., 5 All., 274, followed. *Dulal Chandra Deb v. Ram Narain Deb*, I. L. R., 31 Calc., 1057, and *Madhusudan Gope v. Behari Lal Gope*, 27 C. L. J., 461, referred to.

*Ram Charan, Banwari, Lal v. Kishori Lal, Ram Sarup*, I. L. R., 50 All. ... 810

CIVIL PROCEDURE CODE, SECTION 47; ORDER XXI, RULE 92.—*Execution of decree—Property included in sale certificate in excess of what was ordered to be sold—Suit for recovery of excess—Limitation—Act No. IX of 1908 (Indian Limitation Act), schedule I, article 12.* In execution of a decree for sale on a mortgage certain property, which was neither included in the mortgage in suit nor in the decree, in some unexplained manner found its way into the sale certificate. The decree-holder himself was the auction purchaser.

*Held*, on suit by the judgement-debtors to recover the property sold in excess of what ought to have been sold, that the suit was not barred by either section 47 or order XXI, rule 92, of the Code of Civil Procedure and, as the sale of the excess property claimed was a nullity, article 12 of the first schedule to the Indian Limitation Act, 1908, could have no application. *Thakur Barmha v. Jiban Ram Marwari*, I. L. R., 41 Calc., 590, followed.

*Bulagi Das v. Kesri*, I. L. R., 50 All. ... 686

CIVIL PROCEDURE CODE, SECTION 60.—*Execution of decree—"Debts"—Attachment—Debts not yet due.* The word "debts" as used in section 60 of the Code of Civil Procedure applies only to debts actually due: it cannot include debts, e.g., rent, which may become

due in future. Rent which has not yet become due cannot be attached either as a debt or as an actionable claim. *Sher Singh v. Sri Ram*, I. L. R., 30 All., 246, and *Webb v. Stenton*, 11 Q. B. D., 518, referred to.

*Lachman v. Jarbandhan*, I. L. R., 50 All. ... 507

**CIVIL PROCEDURE CODE, SECTION 66—Joint Hindu family—Purchase at execution sale of property by father in the name of a stranger—Partition—Suit by member of family for possession of property so purchased.]** The father in a joint Hindu family made a purchase at an execution sale of certain property in the name of one K, who was an outsider. Subsequently, the family property was partitioned and the particular piece of property in question fell to the share of R. R., being resisted in his attempt to obtain possession from K, brought a suit to have his right established and for possession. *Held*, that the suit was barred by section 66 of the Civil Procedure Code. *Bajinath Das v. Bishan Devi*, I. L. R., 42 All., 711, followed. *Nataraja Mudaliyar v. Ramasami Mudaliar*, I. L. R., 45 Mad., 856, *Badh Singh Doodhoria v. Gunesht Chunder Sen*, 12 Beng., L. R., 317, *Narain Dei v. Durga Dei*, I. L. R., 35 All., 138, and *Ganga Sahai v. Kesri*, I. L. R., 37 All., 545, distinguished.

*Ram Rup Teli v. Khaderu Teli*, I. L. R., 50 All. ... 512

**CIVIL PROCEDURE CODE, SECTION 68; SCHEDULE III, PARAGRAPH 1—Execution of decree—Execution transferred to Collector—High Court not competent to interfere with Collector's orders, even though erroneous.]** When a decree has been transferred to a Collector for execution under the provisions of section 68 of the Code of Civil Procedure, it is not competent to the High Court to interfere with the orders passed by him even though they may be obviously not warranted by the provisions of schedule III, paragraph 1, of the Code. *Shahzad Singh v. Hanuman Rai*, I. L. R., 46 All., 562, and *Girdhari Lal v. Jhaman Lal*, 25 A. L. J. 197, followed. *Mahadaji Karundikar v. Hari D. Chikne*, I. L. R., 7 Bom., 332, referred to.

*Krishna Das v. Ram Gopal Singh*, I. L. R., 50 All. ... 827

**CIVIL PROCEDURE CODE, SECTION 92—Religious endowment—Suit by alleged trustee against a person asserted to be a trespasser—Devolution of right to appoint trustee.]** Section 92 of the Code of Civil Procedure has reference to those cases alone where there is an allegation of breach of some express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of any such trust.

It has no application to suits where a plaintiff claims possession of the endowed property on the allegation that he is the duly appointed trustee and that the defendant is a trespasser. *Inayat Husain v. Faiz Muhammad*, I. L. R., 45 All., 335, *Muhammad Abdul Majid Khan v. Ahmad Said Khan*, I. L. R., 35 All., 459, *Pattu Lal v. Daya Nand*, I. L. R., 44 All., 721, and *Nilkanth Devrao v. Ramkrishna Vithal*, I. L. R., 46 Bom., 101, referred to.

In the absence of a provision in the deed prescribing the mode of devolution to the office of *shebait* of a temple, and in the absence of a custom to the contrary, the power to appoint a successor to a *shebait* reverts to the heirs of the founder of the trust, and a *shebait* has no right to appoint a successor to himself. *Chandranath Chakrabarti v. Jadatendra Chakrabarti*, I. L. R., 28 All., 689, *Sheo Prasad v. Aya Ram*, I. L. R., 29

All., 663, and *Sheoratan Kuwari v. Ram Pargash*, I. L. R., 18 All., 227, followed.

*Ganga Charan v. Ram Chandra*, I. L. R., 50 All. ... 165

CIVIL PROCEDURE CODE, SECTION 101 (f)—*Order filing or refusing to file an award made out of court—Appeal—Court fee.*] Held that an appeal lies, under section 101(f) of the Code of Civil Procedure, against an order filing or refusing to file an award without the intervention of the court, and that where such an appeal was to a District Judge against the order of a Munsif, the proper court fee was eight annas.

*Sarwan Pande v. Jagat Pande*, I. L. R., 50 All. ... 128

CIVIL PROCEDURE CODE, SECTION 103, CLAUSE (c)—*Application for leave to appeal to His Majesty in Council—Valuation of case less than Rs. 10,000—"Substantial question of law."*] Ordinarily none but the parties to a litigation are concerned with the result of a case. In every such case, where the valuation is less than the prescribed limit, there is no right of appeal to His Majesty in Council. It is only when a case is of larger importance and the principle, when finally decided by their Lordships of the Privy Council, will be of benefit, not only to the people who are directly involved in the litigation, but to a considerable body of other people, that leave to appeal should be granted. *Radhakrishna Ayyar v. Sivaninatha Ayyar*, I. L. R., 41 Mad., 293, *Banarsi Prasad v. Kashi Krishna Narain*, I. L. R., 23 All., 227, and *Mathura Kurmi v. Jagdeo Singh*, I. L. R., 50 All., 208, followed.

The mere question whether a particular finding by a lower appellate court was a good or bad finding, having regard to the provisions of section 100 of the Code of Civil Procedure, is, in itself, no substantial question of law. *Durga Chowdhurani v. Jewahir Singh Chowdhuri*, I. L. R., 18 Cal., 23, followed.

*Ruchha Saithwar v. Hansrani*, I. L. R., 50 All. ... 640

CIVIL PROCEDURE CODE, SECTION 110—*Appeal to His Majesty in Council—"Substantial question of law"—Construction of a document.*] Held, on an application for leave to appeal to His Majesty in Council, that, the only question for decision in either court being whether the legal relation of the parties arising out of the execution of three documents of even date was that of mortgagor and mortgagee by conditional sale or that of vendor and purchaser subject to an option of re-purchase, the decision of which depended on the application of well-defined legal principles to a particular set of facts, this did not involve a "substantial" question of law within the meaning of section 110 of the Code of Civil Procedure. *Balkishen Das v. Legge*, I. L. R., 22 All., 149, *Jhanda Singh v. Wahid-ud-din*, I. L. R., 38 All., 570, and *Narasingerji v. Parthasaradi Rayanum Garu*, I. L. R., 47 Mad., 729, referred to.

*Mathura Kurmi v. Jagdeo Singh*, I. L. R., 50 All. ... 208

CIVIL PROCEDURE CODE, SECTION 111, See Act No. I of 1872, section 114 ... 145

CIVIL PROCEDURE CODE, SECTION 115—*Revision—Non-joinder of necessary party—Order refusing substitution and consequential amendments—"Case decided".*] Held that no revision would lie against an order of a Subordinate Judge refusing to substitute as plaintiffs in an original suit certain persons alleged to be interested in the suit, but whose remedy as plaintiffs was already time-barred; the order was a mere interlocutory order, and did not amount to the decision of a "case" within the meaning of section 115 of the Code of Civil Procedure.

*Buddhu Lal v. Mewa Ram*, I. L. R., 43 All., 564, *Lal Chand v. Behari Lal*, I. L. R., 5 Lah., 288, and *Balkrishna v. Vasudeva Aiyar*, 44 I. A., 261, *Kalidas Kevaldas v. Nathu Bhagavan*, I. L. R., 7 Bom., 217, *Seshan Patter v. Veera Rayhavan Patter*, I. L. R., 32 Mad., 284, and *Fatmabai v. Pirobhai Virji*, I. L. R., 21 Bom., 580, referred to. *Umed Mal v. Chand Mal*, 25 A. L. J., 61, distinguished.

*Equitable Trust Company v. Hafiz Muhammad Halima and Co.*, I. L. R., 50 All. ... 276

CIVIL PROCEDURE CODE, SECTIONS 115 AND 151; ORDER XXXII, RULE 15—Act No. IV of 1912 (*Indian Lunacy Act*), section 62—*Lunacy—Distinction between inquiry under the Lunacy Act and under the Civil Procedure Code—Inherent powers of High Court.*] The matter for determination under section 62 of Act No. IV of 1912 is not the same as the matter for determination in an application under order XXXII, rule 15, of the Code of Civil Procedure. A court, therefore, ought not to refuse to consider an application made to it under order XXXII, rule 15, for the sole reason that another court, of superior jurisdiction, has arrived at a certain decision in a matter under Act No. IV of 1912; and if it does so, this refusal is liable to be called in question under section 151 of the Code of Civil Procedure. *Harnand Lal v. Chaturbhuj*, I. L. R., 48 All., 356, referred to.

*Chaturbhuj v. Harnand Lal*, I. L. R., 50 All. ... 335

CIVIL PROCEDURE CODE, SECTION 115; ORDER XXIII, RULE 1—*Revision—Wrong exercise of discretion in allowing withdrawal of suit not a ground for revision.*] The fact that a court has probably exercised a wrong discretion in allowing a plaintiff to withdraw his suit with liberty to bring a fresh one is not a ground for revision within the purview of section 115 of the Code of Civil Procedure. *Jhunku Lal v. Bisheshar Das*, I. L. R., 40 All., 612, followed.

*Hasan Ali v. Lachhman Prasad*, I. L. R., 50 All. ... 143

CIVIL PROCEDURE CODE, SECTION 115; ORDER XXIII, RULE 1—*Revision—Order permitting withdrawal of suit with liberty to file fresh suit—Reasons not stated—Material irregularity.*] For a court to invoke order XXIII, rule 1, without giving any reason amounts to a material irregularity in exercising the jurisdiction given to it by that rule. If the court is of opinion that an application to withdraw a suit with liberty to bring a fresh one should be granted, it must set forth its reasons for holding that it should be granted, clearly stating whether it is by reason of a formal defect or by reason of some other sufficient cause.

*Kamta Singh v. Bhagwan Das*, I. L. R., 56 All. ... 199

CIVIL PROCEDURE CODE, SECTION 144; ORDER XLV, RULE 15—*Application for restitution as a necessary consequence of an order of His Majesty in Council—Limitation—Act No. IX of 1908 (Indian Limitation Act), schedule 1, article 183—Accidental misdescription of court to which order transmitted for execution—Jurisdiction.*] Where an application is made to obtain restitution as the necessary result of an order of His Majesty in Council, that application must be taken as one to "enforce" an order in Council and will be governed by article 183, and not by the general article 181 of the Indian Limitation Act, 1908.

*Bajinath Das v. Balmakund*, I. L. R., 47 All., 98, and *Brij Lal v. Damodar Das*, I. L. R., 44 All., 555, referred to.

In the case of an application under order XLV, rule 15, of the Code of Civil Procedure made within 12 years from the date of the order of the Privy Council, the fact that by inadvertence the

papers were directed to be sent to a wrong court would not amount to an illegality such as would either vitiate the proceedings or deprive the court, to which the papers were intended to be sent down, of its jurisdiction to proceed with the execution of the decree of the Privy Council.

*Sohan Bibi v. Baijnath Das*, I. L. R., 50 All. ... 767

CIVIL PROCEDURE CODE, SECTION 149, *See* Act No. VII of 1870, section 4 ... 980

CIVIL PROCEDURE CODE, SECTIONS 151 AND 152—*Execution of decree—Correction of accidental slip in judgement and decree—Abuse of the process of the Court.*] In a suit for partition of immovable property a certain portion of the property involved, belonging to one set of defendants, was decreed to the plaintiff and the portion belonging to another set of defendants was exempted, and the amin of the court was ordered to draw up a map showing what portion of the property had been decreed to the plaintiff. The map, however, showed as having been decreed to the plaintiff the portion which belonged to the exempted defendants, and in consequence of this the plaintiff obtained possession of the property which had not been decreed to him. The exempted defendants applied for correction of the record, which was refused on the ground that the decree was not at variance with the judgement.

In revision the High Court ordered a fresh and correct map to be prepared, and returned the case to the lower court with directions that the revised map should be substituted for that existing on the record.

*Sattar v. Nazir Khan*, I. L. R., 50 All. ... 859

CIVIL PROCEDURE CODE, ORDER IX, RULE 3—*Suit dismissed and application to restore it dismissed—Competence of plaintiff to bring a fresh suit on the same cause of action.*] A suit in a Court of small causes was dismissed because, on the date fixed for hearing, neither party appeared. The plaintiff applied for restoration of the suit; but his application was dismissed.

Held that it was competent to the plaintiff to file a fresh suit on the same cause of action. *Daya Shankar v. Raj Kumar*, 20 Outh Cases, 66, and *Bhudeo v. Baikunthi*, 63 Indian Cases, 229, approved.

*Govind Prasad v. Har Kishan*, I. L. R., 50 All. ... 837

CIVIL PROCEDURE CODE, ORDER XXI, RULE 2—*Uncertified payment out of court in respect of mortgage decree—Certification refused—Right of mortgagor to get back money so paid.*] Plaintiff paid a sum of money to defendant to be applied by him *pro tanto* in satisfaction of a mortgage decree preliminary which defendant held against plaintiff. The payment, however, was made out of court and an application for its certification to the court was resisted and ultimately rejected. Held, that, although the payment, not having been certified, could not be taken into account as a part satisfaction of the decree, the plaintiff was entitled, as the consideration for the payment had failed, to claim back the money which he had paid, as money in the hands of the defendant received by him to the use of the plaintiff. *Sital Singh v. Baijnath Prasad*, I. L. R., 44 All., 668, referred to.

*Mahbub Ali v. Muhammad Husain*, I. L. R., 50 All. ... 111

CIVIL PROCEDURE CODE, ORDER XXI, RULE 2, SUB-RULE (3)—*Act No. IX of 1908 (Indian Limitation Act), section 20—Execution of decree—Limitation—Certification of previous payments.*] If a decree-holder's application for execution is barred by limitation,



he cannot save the situation by pleading a previous payment of interest alleged to have been made before limitation had expired and asking the court to certify such payment then and there, i.e., when execution was already time-barred. *Bajinath v. Panna Lal*, I. L. R., 46 All., 635, *Gokul Chand v. Bhika*, 12 A. L. J., 387, *Chattar Singh v. Amir Singh*, I. L. R., 38 All., 204, *Eusuffzeman Sarkar v. Sanchia Lal Nahata*, I. L. R., 43 Calc., 207, *Pandurang v. Jagya*, I. L. R., 45 Bom., 91, *Masilamani Mudaliar v. Sethuswami Ayyar*, I. L. R., 41 Mad., 251, and *Sheikh Elahi Bur v. Nawab Lal*, 4 Pat., L. J., 159, referred to.

*Piari Mohan Prasad v. Raghunath Lal*, I. L. R., 50 All. 259

CIVIL PROCEDURE CODE, ORDER XXI, RULE 16; ORDER XXII, RULE 1,  
See Act No. IX of 1908, schedule I, article 182 ... 621

CIVIL PROCEDURE CODE, ORDER XXI, RULES 58, 60 AND 63—*Execution of decree—Attachment—Objection by judgement-debtor that property is trust property and he is in possession as mutawalli—Objection upheld—Remedy of decree-holder.*] The objection of a judgement-debtor to the attachment of certain property in execution of a decree against him was that though the property sought to be attached was vested in him, it was vested in him not in his private capacity but as *mutawalli* of a *math*, and, therefore, could not be taken in execution by the decree-holder.

*Held* that this objection was one under order XXI, rule 58, of the Code of Civil Procedure; that the order of the court upon it was consequently an order passed under order XXI, rule 60, and that therefore the person against whom the order was passed had no right of appeal, but his remedy was by way of suit in accordance with rule 63.

*Bhagwan Das v. Mahmud Bano*, 75 Indian Cases, 1053, *Kartik Chandra Ghose v. Ashutosh Dhar*, I. L. R., 39 Calc., 298, *Ramanathan Ghattiar v. Levvai Marakayar*, I. L. R., 23 Mad., 195, *Murigeysa v. Hayat Saheb*, I. L. R., 23 Bom., 237, *Upendra Nath Kalamuri v. Kusum Kumari Dasi*, I. L. R., 42 Calc., 440, and *Seth Chand Mal v. Durga Dei*, I. L. R., 12 All., 313, referred to.

*Somwar Gir v. Mayanand Gir*, I. L. R., 50 All. ... 801

CIVIL PROCEDURE CODE, ORDER XXI, RULE 72, See Act No. VII of 1913, sections 179 and 215 ... 173

CIVIL PROCEDURE CODE, ORDER XXI, RULE 95, See Act No. IX of 1908, schedule I, article 182 ... 670

CIVIL PROCEDURE CODE, ORDER XXI, RULE 96—*Purchase of undivided share at a sale in execution—Delivery of formal possession—Suit for actual possession—Limitation—Act No. IX of 1908 (Indian Limitation Act), schedule I, article 142.*] In the case of auction purchase of an undivided share in joint property the only possession which can be delivered is joint possession, and that can be done only as provided by order XXI, rule 96, of the Code of Civil Procedure. Where this has been done, and the judgement-debtor still continues in actual possession along with the other co-owners, limitation in respect of a suit to obtain actual possession by means of physical partition of the share purchased begins to run against the purchaser from the date of delivery of formal possession. *Rajendra Kishore Singh v. Bhagwan Singh*, I. L. R., 39 All., 460, and *Jang Bahadur Singh v. Hanwant Singh*, I. L. R., 43 All., 520, followed.

*Sita Ram Dube v. Ram Sundar Prasad*, I. L. R., 50 All. 813

**CIVIL PROCEDURE CODE, ORDER XXII, RULE 4, SUB-RULE (3)**—*Abatement of Appeal*—How far abatement as regards one defendant affects the others—Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 111(a) and 233 (k)—*Partition—Ouster of jurisdiction of civil court.*] A suit for a declaration of title was filed against two separate sets of defendants and was dismissed, and an appeal against this decision was also dismissed. The plaintiffs appealed to the High Court, and pending this appeal one of the defendants of the second set died and no steps were taken within time to bring his heirs on to the record. Held by SOLAIMAN, MUKERJI, and ASHWORTH, JJ., (on a special reference as to how far the appeal had abated) that the appeal abated as to the second set of defendants, but not as to the first set, whose interests were separate and distinct from those of the second.

Held, also by MUKERJI and ASHWORTH, JJ., that the suit, having been filed after the commencement of partition proceedings in a court of revenue, was not maintainable.

Faqira v. Hardewa, I. L. R., 50 All. ... 559

**CIVIL PROCEDURE CODE, ORDER XXIII, RULE 1**—*Order permitting withdrawal of appeal—Application for amendment of decree.*] When an appellate court does not judicially deal with the matter of a suit but merely permits an appeal to be withdrawn, so that the decree of the court below is left intact, it cannot be said that it has confirmed the decision appealed from. It is not, therefore, possible for such court to entertain an application for amendment of the decree. Abdul Majid v. Jawahir Lal, I. L. R., 36 All., 350, Nand Lal Saran v. Dharam Kirti Saran, I. L. R., 48 All., 377, and Pitam Lal v. Balwant Singh, 23 A. L. J., 518, followed.

Deoki v. Jwala Prasad, I. L. R., 50 All. ... 608

**CIVIL PROCEDURE CODE, ORDER XXIII, RULE 1**—*Withdrawal of suit, with liberty to bring fresh suit—"Formal defect"—Revision.*] Where a court allowed a plaintiff to withdraw his suit with liberty to bring a fresh one upon the ground that he had not given formal proof of a document which was essential to his success, it was held that the court was within its jurisdiction, and that the High Court should not interfere. Jhunku Lal v. Bisheshar Das, I. L. R., 40 All., 612, followed. Baijnath Pande v. Babban Pande, I. L. R., 49 All., 459, distinguished.

Chandrika Lal v. Sami Nath, I. L. R., 50 All. ... 635

**CIVIL PROCEDURE CODE, ORDER XXIII, RULES 1 AND 3**—*"Lawful agreement"—Compromise effected during pendency of appeal before High Court—Undue influence—Inherent powers of High Court.*] A suit by a wife against her husband for recovery of her dower-debt was dismissed. Plaintiff appealed to the High Court. Pending the appeal, the parties entered into an agreement in pursuance of which a joint application was made to the trial court stating that the parties had agreed that the suit should be dismissed and asking that the application for compromise should, after due certification, be forwarded to the High Court; so that the appeal might be dismissed in terms of it. The application, after verification by the plaintiff through the munsarim of the court, was sent to the High Court, but before any decree could be passed the plaintiff appellant died, and her heirs were brought upon the record.

Held, on objection taken by the respondent that the appeal could not be proceeded with,—(1) that rule 3, and not rule 1,

of order XXIII, of the Code of Civil Procedure was applicable; (2) that the word "lawful" in rule 3 referred to agreements which in their very terms or nature were not "unlawful" and, therefore, might include agreements which were voidable at the option of one of the parties on the ground of undue influence, coercion or fraud: *Nand Lal v. Ram Sarup*, [1927] A. I. R., Lahore, 516, dissented from; *Budhu Mal v. Rup Kour*, [1890], P. R., No. 81, p. 254, and *Ala Bakhsh Khan v. Kasim Ali Khan*, [1895] P. R., No. 48, p. 203, referred to; (3) that although it might be open to the Court, under section 151 of the Code of Civil Procedure, to refuse to record a compromise brought about by undue influence, yet where the person said to have been subjected to undue influence did not repudiate the compromise in her lifetime and the determination of the question of undue influence would have involved an elaborate and lengthy inquiry, the Court did not consider it necessary to exercise its extraordinary powers under section 151 of the Code. *Sreemati Sabitri Thakurain v. Savi*, I. L. R., 6 Pat., 108 and *Gajendra Singh v. Durga Kunwar*, I. L. R., 47 All., 637, referred to.

*Qadri Jahan Begma v. Fazal Ahmad*, I. L. R., 50 All.... 748

CIVIL PROCEDURE CODE, ORDER XXIII, RULE 3; SCHEDULE II, PARAGRAPH 16 (1)—*Arbitration—Award—Decree passed without allowing time for filing objections—Appeal.* The parties to a pending suit appeared before the court and stated that they would accept the statement which three pleaders of the court, whose names were mentioned, would make without taking oath, or, if they were not unanimous, the statement of the majority. The pleaders were to decide all the points in dispute among the parties and were also to dispose of the question of costs. On this statement of the parties being recorded, the court referred the case to the three pleaders. The pleaders, after several adjournments, filed a long statement in writing, and thereupon the court proceeded at once to decide the case in accordance with the statement, and, on judgement being given, a decree followed.

*Held*, that the proceeding was not an agreement or compromise, to which order XXIII, rule 3, of the Code of Civil Procedure would apply, but was an arbitration. Taking it as an arbitration, the court was wrong in not allowing the parties time for filing objections, and an appeal would lie from its decree. *Tursi Ram v. Basdeo*, 24 A. L. J., 705, *Muhammad Ashgar Ali Khan v. Muhammad Imtiaz Ali*, Weekly Notes, 1898, p. 200, and *Himanchal Singh v. Jatwar Singh*, I. L. R., 46 All., 710, referred to.

*Bajinath Prasad v. Narain Prasad*, I. L. R., 50 All. ... 51

CIVIL PROCEDURE CODE, ORDER XXXIV, RULE 1—*Mortgage—Several mortgages held by same mortgagee over same property—Right to sue on the mortgages independently of each other.* *Per* IQBAL AHMAD, J.:—In view of the provisions of order XXXIV, rule 1, of the Code of Civil Procedure it is open to a subsequent mortgagee to put his mortgage into suit without impleading the prior mortgagee. That being so, it is open to a person holding two mortgages over the same property to put his second mortgage into suit without claiming to enforce his first mortgage, provided he expressly declares his intention of reserving his rights as a prior mortgagee and claims to sell the property in enforcement of the second mortgage subject to his rights as a prior mortgagee.

*Per* ASHWORTH, J.:—Where a person holds two mortgages over the same property, he cannot sue on the first mortgage alone

without foregoing the second mortgage. He can, however, sue and sell on a second mortgage provided that he declares the existence of a first mortgage and has it entered in the sale proclamation. If he does not do so, then he must be deemed to have foregone the first mortgage.

*Sundar Singh v. Bholu*, I. L. R., 20 All., 322, *Mata Din Kasodhan v. Kazim Husain*, I. L. R., 13 All., 432, and *Ram Shankar Lal v. Ganesh Prasad*, I. L. R., 29 All., 385, referred to.

*Ram Saran v. Abdul Ghaffar*, I. L. R., 50 All. ... 742

**CIVIL PROCEDURE CODE, ORDER XXXIV, RULE 6—Mortgage—Decree—Mortgaged property ceasing to be available for sale through no fault of the mortgagee—Mortgagee's right to a personal decree.]** Where property the subject of a suit for sale on a mortgage has ceased to be available for sale owing to no fault of the mortgagee, the mortgagee is entitled to a personal decree, the whole right to which the mortgagee has had all along, but which right has merely been suspended owing to the fact that his remedy against the mortgaged property was not yet shown to have been exhausted or to be otherwise unavailable. Such a decree is not within order XXXIV, rule 6, of the Code of Civil Procedure, nor based by analogy with order XXXIV, rule 6, on any legal fiction that there has been a sale.

*Ram Raghubir v. Imami Begam*, 9 Indian Cases, 463. *Sheo Din v. Bhawani*, 9 Indian Cases, 752; 14 Oudh Cases, 62, and *Brij Behari v. Indarpal*, 57 Indian Cases, 967; 23 Oudh Cases, 145, followed. *Pirbhu Narain Singh v. Amir Singh*, I. L. R., 29 All., 369, *Bihari Lal v. Bisheshar Dayal*, 9 A. L. J., 569, *Darbari Mal v. Mula Singh*, I. L. R., 42 All., 519, *Kedar Nath v. Chandu*, I. L. R., 26 All., 25, *Salish Ranjan Das v. Mercantile Bank of India, Ltd.* I. L. R., 45 Calc., 702, and *Badal Singh v. Debi Saran Dube*, I. L. R., 49 All., 806, referred to.

*Bisheshar Nath v. Chandu Lal*, I. L. R., 50 All. ... 321

**CIVIL PROCEDURE CODE, ORDER XXXIV, RULE 8—Mortgage by conditional sale—Execution of decree—Power of court to extend time for payment.]** The proviso to rule 8 of order XXXIV of the Code of Civil Procedure applies to the whole of the rule and not merely to sub-rule (4). A court, therefore, has power to extend the time for payment in a suit for redemption of a mortgage by conditional sale, just as in the case of any other kind of mortgage.

*Narsingh Prasad Singh v. Pratap Singh*, I. L. R., 50 All. 883

**CIVIL PROCEDURE CODE, ORDER XXXIV, RULE 14—Mortgage—Same property subject to a usufructuary mortgage and a later simple mortgage to the same mortgagee—Effect of sale under a decree on the later mortgage.]** Two villages were mortgaged usufructuarly on the 20th of April, 1877, for Rs. 22,000, and half of a third village was hypothecated as collateral security. Four days later, the mortgagee leased the first two villages to the mortgagor, and the mortgagor hypothecated all three villages to the mortgagee as security for the lease-money. The lease-money was not paid and in consequence the lessee was ejected. The mortgagee then, having taken possession, brought a suit on the deed of the 24th of April, 1877 (the second, and simple, mortgage) for the sale of the three villages, subject to his earlier mortgage of the 20th of April, and, having obtained a decree, brought the property to sale and purchased it himself.

*Held*, on suit by the heirs of the mortgagor to redeem the earlier (usufructuary) mortgage, that what was really sold and purchased by the defendants, mortgagees, decree-holders was the

plaintiffs' equity of redemption, and, therefore, the suit could not be maintained. *Khairajmal v. Daim*, I. L. R., 32 I. A., 23; I. L. R., 32 Cal., 296, *Lal Bahadur Singh v. Abharan Singh*, I. L. R., 37 All., 165, *Sardar Singh v. Ratan Lal*, I. L. R., 36 All., 516, *Mata Din Kasodhan v. Kazim Husain*, I. L. R., 13 All., 432, and *Parmanand v. Daulat Ram*, I. L. R., 24 All., 549, referred to.

*Jagat Singh v. Jai Narain*, I. L. R., 50 All. ... 12

CIVIL PROCEDURE CODE, ORDER XLI, RULE 5.—*Execution of decree—Stay order passed by appellate court—Sale held in ignorance of the order—Validity of sale.*] Where a subordinate court went on with the execution of a decree and sold certain property in ignorance of the fact that an order for stay had been passed by the High Court, and the property was purchased by a third party, it was held that, there being no other objection, the sale must stand. *Sahu Nand Kishore v. Shadi Ram*, 24 A. L. J., 519, distinguished. *The Ganges Flour Mills Co. v. Shadi Ram*, 18 A. L. J., 46, *Nonidh Singh v. Musammat Sohun Kooer*, 4 N. W. P. H. C. R., 135, *Mian Jan v. Man Singh*, I. L. R., 2 All., 686, *Maijha Singh v. Jhwa Lal*, 6 N. W. P. H. C. R., 354, *Sant Lal v. Umrao-un-nissa*, I. L. R., 12 All., 98. *Bessessrari Choudhary v. Harro Sundar Mozumdar*, 1 C. W. N., 226, *Hukum Chand Boid v. Kamalanand Singh*, I. L. R., 33 Cal., 927, *Muthu Kamarasami Rowther v. Kuppusami Aiyangar*, I. L. R., 33 Mad., 74, *Ramanathan Chetty v. Arunachellam Chetty*, I. L. R., 38 Mad., 766, and *Venkatachulapati Rao v. Kameswaramma*, I. L. R., 41 Mad., 151, referred to.

*Per MUKERJI, J.*—The principle of *stare decisis* does not apply, as the question raised is not of substantive law but of procedure alone.

*Parsotam Saran v. Barhma Nand*, I. L. R., 50 All. ... 41

CIVIL PROCEDURE CODE, ORDER XLI, RULE 33, *See Mortgage* ... 218

CIVIL PROCEDURE CODE, SCHEDULE II, *See Act No. VII of 1913, sections 152, 179 and 234* ... 867

CIVIL PROCEDURE CODE, SCHEDULE II, PARAGRAPH 15 (1) (c).—*Arbitration—Award—Application to revise decree based on award on ground of invalidity of reference.*] The words "being otherwise invalid" in paragraph 15 (1) (c) of the second schedule to the Code of Civil Procedure do not include the question whether there was or was not a valid reference to arbitration. An application in revision will therefore lie on the ground of the initial invalidity of the reference. *Kanhaiya Lal v. Jagannath Prasad, Hanuman Prasad*, I. L. R., 43 All., 305, *Gopal Das v. Baij Nath*, I. L. R., 48 All., 289 and *Tej Singh v. Ghazi Ram*, I. L. R., 49 All., 512, followed. *Ajudhia Prasad v. Badar-ul-Husain*, I. L. R., 39 All., 489 and *Hari Shankar v. Ram Piari*, I. L. R., 45 All., 441, referred to.

Where certain arbitrators appointed in the course of a pending suit at one time returned the papers to the court and said that they did not want to go on with the arbitration but afterwards agreed to continue, and in fact pronounced an award on which a decree was passed in due course; *Held* that in such circumstances the award was not open to objection.

*Mahadeo Prasad v. Badri Das, Ram Sarup*, I. L. R., 50 All. ... 935

"COMMON ANCESTOR." *See Act (Local) No. XI of 1922, section 12 (3)* ... 404

COMPANY—*Liquidation—Official liquidator—Position of a liquidator as compared with that of the company before liquidation—Costs of*

proceedings out of court.] Liquidation gives the official liquidators a cause of action which the company may not by itself have possessed.

A member of a company in liquidation is, therefore, liable in respect of unpaid calls, even though as against the company the realization of such calls may have become barred by limitation. *Jagannath Prasad v. The U. P. Flour and Oil Mills Company, Limited*, I. L. R., 38 All., 347, followed.

Held further, that the liquidators' claim against an alleged contributory in respect of a certain definite number of shares would not be affected by the fact that the company had previously sued the contributory and had obtained, on a compromise, a decree in respect of only half the number of shares.

Held also, that costs of proceedings out of court by a liquidator in sifting claims and objections ought not to be awarded against the claimants or objectors.

*In re Dehra Dun Mussoorie Electric Tramway Company, Ltd.*, (in liquidation), I. L. R., 50 All. ... 476

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| COMPANY, <i>See</i> Act No. VII of 1913, section 171  | ... | 419 |
| COMPANY, <i>See</i> Act No. VII of 1913, section 215  | ... | 482 |
| COMPROMISE, <i>See</i> Civil Procedure Code, order XXIII, rules 1 and 3   | ... | 748 |
| COMPROMISE, <i>See</i> Act (Local) No. XI of 1922, section 4 (10)   | ... | 454 |
| CONTRACT. Obligation resembling—, <i>See</i> Act No. IX of 1872, sections 72 and 73   | ... | 818 |
| CONTRIBUTION. Suit for—, <i>See</i> Act No. IV of 1882, sections 74, 82, 95 and 100   | ... | 569 |
| CO-PARCENARY MAHAL, <i>See</i> Zamindar and tenant  | ... | 479 |
| COSTS, <i>See</i> Muhammadan law  | ... | 733 |
| COSTS—Taxation of—Contested application for probate before a District Judge—High Court Rules, 1898, chapter XVI, rule 2—General Rules (Civil), chapter XXI, rules 22 and 26.] Held that the rule applicable to the taxation of costs in a contested application for probate before a District Judge is rule 26 of chapter XXI of the General Rules (Civil) for subordinate civil courts. Such a proceeding is not a "suit" but a "miscellaneous judicial case." <i>Sundrabai Saheb v. The Collector of Belgaum</i> , I. L. R., 33 Bom., 256, and <i>Baijnath Prasad v. Sham Sundar Kuar</i> , I. L. R., 41 Calc., 367, referred to. |     |     |

*Kanhaiya Lal v. Gendc.* .. I. R., 50 All. ... 238

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| COURT FEES, <i>See</i> Act No. VII of 1870, section 4                  | ... | 980 |
| COURT FEES, <i>See</i> Act No. VII of 1870, section 7, clause (iv) (c) | ... | 610 |
| COURT FEE, <i>See</i> Civil Procedure Code, section 101(f)             | ... | 128 |
| CO-WIDOWS, <i>See</i> Hindu law  | ... | 489 |

CRIMINAL PROCEDURE CODE, SECTIONS 99A, 99B AND 251—Act No. XLV of 1860 (Indian Penal Code), section 153A—Proscription of book by Government—Application to set aside order of Government dismissed by High Court—Effect of order of High Court on trial of author of the proscribed book under section 153A of the Indian Penal Code—Act No. I of 1872 (Indian Evidence Act), sections 11 and 13.] During a trial for an offence under section 153A of the Indian Penal Code, the offence being alleged to have been committed by means of a certain book written by the accused, and when twenty witnesses for the prosecution had been examined, the Local Government, by a notification under section 99A of the Code of Criminal Procedure, proscribed the book in question. The

accused applied to the High Court, under section 99B of the Code, to set aside this order, and on this application a Bench of three Judges found that "the book contained matter which promoted, or was intended to promote feelings of enmity or hatred between different classes of His Majesty's subjects," and, therefore, dismissed the application. On this order being communicated to him, the trying magistrate at once closed the case, without recording any further evidence, and convicted the accused. The accused appealed to the Sessions Judge; but his appeal was dismissed.

*Held*, on an application to revise these orders, that the trying magistrate had no alternative, in the face of the decision of the High Court in the same matter, but to convict the accused, and, in these circumstances, was justified in disallowing all further evidence: The High Court therefore refused to interfere.

*Held*, further, that the decision of the High Court on the application under section 99B was relevant and admissible in evidence under sections 11 and 13 of the Evidence Act.

Emperor v. Kali Charan Sharma, I. L. R., 50 All. ... 157

CRIMINAL PROCEDURE CODE, SECTION 107—*Security for keeping the peace—Bonds executed thereupon, without evidence being taken—Legality—Accused expressing their willingness to execute bonds.*] Where an accused, called upon to give security for keeping the peace, said in terms, before any prosecution evidence was recorded, that he was willing to give security, it was held that this was sufficient proof that it was necessary for keeping the peace that he should execute a bond, and it was not necessary that any prosecution evidence should be called before taking a bond from him. *Chander Shekhar v. Emperor*, 54 Indian Cases, 411, *Emperor v. Ghariba*, I. L. R., 46 All., 109, *Jagdat Tewari v. Emperor*, 54 Indian Cases, 784, *Ram Charan v. Emperor*, 24 A. L. J., 317, *Emperor v. Mul Chand*, I. L. R., 37 All., 80, *Prathipati Venkatasami v. Emperor*, I. L. R., 30 Mad., 330, *Ram Chandra Halder v. Emperor*, I. L. R., 35 Calc., 674, and *Prem Singh v. Emperor*, 41 Indian Cases, 671, referred to.

Emperor v. Nasir Ahmad, I. L. R., 50 All. ... 120

CRIMINAL PROCEDURE CODE, SECTION 107—*Security for keeping the peace—Order passed on the admission of the accused that he is willing to give security.*] Where a person against whom a notice is issued under section 107 of the Code of Criminal Procedure consents to give security, there is no reason why the Magistrate concerned should not proceed to pass orders against him without further inquiry, provided that the Magistrate is satisfied that such person fully understood the meaning of the notice and that he was at liberty to show cause against it if he wished to do so. *Emperor v. Ghariba*, I. L. R., 46 All., 109, followed. *Palaniappa Asary v. Emperor*, I. L. R., 34 Mad., 139, and *Jagdat Tewari v. Emperor*, 54 Indian Cases, 784, referred to.

Emperor v. Kishan Narain, I. L. R., 50 All. ... 599

CRIMINAL PROCEDURE CODE, SECTION 108—*Act No. XLV of 1860 (Indian Penal Code), section 153A—Proof of one solitary act alone not sufficient for section 108.*] A person who is found on one occasion only circulating notices which may have the effect of promoting enmity between classes may possibly be prosecuted under section 153A of the Indian Penal Code, but he cannot be proceeded against under section 108 of the Code of Criminal Procedure.

Emperor v. Chiranji Lal, I. L. R., 50 All. ... 854

CRIMINAL PROCEDURE CODE, SECTION 109 (a) AND (b)—*Application of the section, more particularly sub-section (a).*] Section 109 (a) of the Code of Criminal Procedure is applicable to a person who, being or coming within the local limits of the jurisdiction of a certain magistrate, takes precautions to conceal his presence with a view to committing an offence. It is not limited to the more restricted case of a person who, with a similar object, takes precautions to conceal the fact of his presence within the local limits of the jurisdiction of a certain magistrate.

So held by SULAIMAN, A. C. J., and KENDALL and WEIR, JJ.

The police received information that a number of persons were hiding themselves on a dark night at about midnight in a mango grove outside the *abadi* of a village with a view to commit some offence. When the police went to the grove they found four persons sitting there, who, on being challenged, tried to run away. They were chased, and two of them were captured. They had house-breaking instruments (*jeminies* or *sabaris*) with them. When caught they first gave wrong names and addresses, and then, later on, disclosed their real identities. They were residents of the same sub-division.

Held by SULAIMAN, A. C. J., that section 109 (a) was applicable to the above facts, but not 109 (b).

Held by BOYS, J., that section 109 (b) was applicable, but not 109 (a).

Held by BANERJI, J., that neither section 109 (a) nor 109 (b) was applicable.

Held by KENDALL, J., that both sections 109 (a) and 109 (b) were applicable.

Held by WEIR, J., that section 109 (a) was applicable, and quite possibly section 109 (b) also, though in the circumstances of the present case it was not necessary to decide whether or not that sub-section applied.

*Emperor v. Bhairon*, I. L. R., 49 All., 240, and *Emperor v. Himayat-ullah*, I. L. R., 49 All., 844, overruled. *Rashu Kabiraj v. King-Emperor*, 27 C. L. J., 382, *Sheikh Piru v. King-Emperor* 41 C. L. J., 142, *Sharif Ahmad v. King-Emperor*, 8 A. L. J., 1097, *Ghulam Jilani v. Emperor* 17 A. L. J., 432, *Lattu v. Emperor*, 17 A. L. J., 891, *Pambirich Ahir v. King-Emperor*, I. L. R., 6 Pat., 177, and *Satish Chandra Sarkar v. Emperor* I. L. R., 39 Cal., 456, referred to.

*Emperor v. Phuchai*, I. L. R., 50 All. ... 909

CRIMINAL PROCEDURE CODE, SECTIONS 110 AND 256—*Security for good behaviour—Accused not given an opportunity of cross-examining prosecution witnesses—Illegality.*] A magistrate conducting proceedings under section 110 of the Code of Criminal Procedure is bound to give the accused a reasonable opportunity of cross-examining the prosecution witnesses. If he refuses to do so, this is a good ground for setting aside the proceedings. *Chintamon Singh v. Emperor*, I. L. R., 35 Calc., 243, and *Ganga Singh v. King-Emperor*, 10 A. L. J., 383, referred to.

*Emperor v. Tirluk*, I. L. R., 50 All. ... 71

CRIMINAL PROCEDURE CODE, SECTIONS 118, 121 AND 514—*Security for keeping the peace—Bond executed with sureties—Circumstances in which the surety's bond can be declared forfeited—Act No. XLV of 1860 (Indian Penal Code), section 172—Absconding to avoid a warrant of arrest.*] Absconding to avoid arrest under a warrant is not an offence within the meaning of section 172 of



the Indian Penal Code, nor is it one of the offences specified in section 121 of the Code of Criminal Procedure, for the commission of which alone can a surety's bond be forfeited. *Udham Singh v. King-Emperor*, Vol. 48 P. R. (Cr. J.), No. 15, dissented from. *Queen v. Womesh Chunder Ghose*, 5 W. R., (Cr. R.), 71, *Majhi Mamul v. Emperor*, 2 C. L. J., 625, *Queen v. Zahoor Ali*, 4 N.W. P., H. C. R., 97, and *Queen v. Amir Jan*, 7 N.W. P., H. C. R., 302, followed.

*Emperor v. Shoo Jangal Prasad*, I. L. R., 50 All. ... 666

**CRIMINAL PROCEDURE CODE, SECTIONS 137 AND 139A—Public nuisance—**

*Distinction between public right and private right—Bond fide claim to the exercise of a private right—Procedure.]* Where in the course of proceedings initiated under chapter X of the Code of Criminal Procedure it becomes apparent that there is a *bond fide* question of the private rights of the parties involved, the proper course for the court to adopt is to stay the proceedings until such time as rights of the parties concerned have been decided by a competent civil court. *Emperor v. Bharosa Pathak*, I. L. R., 34 All., 345, *In re Maharana Shri Jaswantsangji Fatesangji*, I. L. R., 22 Bom., 988, *Jagannath Sahu v. Parmeshwar Narain*, I. L. R., 36 All., 209, *Abdul Wahid Khan v. Abdullah Khan*, I. L. R., 45 All., 657, *Bhagwan Das v. Emperor*, 73 Indian Cases, 523, and *Manipur v. Bidhu Bhushan Sarkar*, I. L. R., 12 Calc., 158, referred to.

*Munna Tiwari v. Chandrabali*, I. L. R., 50 All. ... 871

**CRIMINAL PROCEDURE CODE, SECTIONS 144 AND 561A—Emergency order**

*—Wrongful use of section to procure the delivery of property by the defendant to the plaintiff in a civil suit.]* Section 144 of the Code of Criminal Procedure cannot legally be used simply to procure the transfer of property and documents from the person in possession to the claimant, because, in the opinion of the court, the claimant is entitled to their possession; and when, as a matter of fact, it has been so used, section 561A of the Code enables the court, if it so thinks fit, to direct that the property and documents in question be retransferred. *Bhaganathi Serrai v. Valayee*, 33 Indian Cases, 830, and *Chandra Nath Mukerji v. Emperor*, 47 Indian Cases, 803, referred to.

*Hafiz-ud-din v. Laborde*, I. L. R., 50 All. ... 414

**CRIMINAL PROCEDURE CODE, SECTION 161—Act No. I of 1872 (Indian**

*...Evidence Act), sections 145 and 155—Limitations on use of statement made under section 161.]* A previous statement of a witness recorded under section 161 of the Code of Criminal Procedure can be used as provided for by sections 145 and 155 of the Indian Evidence Act, 1872; but it cannot be used as substantive evidence of the facts deposed to therein.

*Bomanji Cowasjee v. The Chief Judge and the Judges of the Chief Court of Lower Burma*, L. R., 34 I. A., 55, and *Emperor v. Cherath Choyi Kutti*, I. L. R., 26 Mad., 191, referred to. *Puttu v. King-Emperor*, 17 Oudh Cases, 363, followed.

*Emperor v. Bishan Datt*, I. L. R., 50 All. ... 242

**CRIMINAL PROCEDURE CODE, SECTION 233 (d), See Act No. III of 1867, sections 3 and 4 ... 412**

**CRIMINAL PROCEDURE CODE, SECTION 260, See Act No. VI of 1924, sections 20 and 22 ... 718**

**CRIMINAL PROCEDURE CODE, SECTION 307—Acquittal by a jury—Reference to the High Court—What the order of reference should contain.]** In making a reference under section 307 of the Code of Criminal Procedure, the Judge, should, in effect, show the reasons for convicting the accused in as clear a manner as he would have

done if the case had not been a jury case and he had had to write a convicting judgment.

Emperor v. Sheo Din, I. L. R., 50 All. ... 540

**CRIMINAL PROCEDURE CODE, SECTION 307—Jury—Power of High Court to revise the verdict of a jury on the merits.]** Where a jury has given its verdict on the facts of the case, it is open to the High Court to revise that verdict on a reference by the trial Judge made under section 307 of the Code of Criminal Procedure where it is not alleged that there has been any misdirection by the Judge or any misunderstanding by the jury of the law as laid down by the Judge. *Wafadar Khan v. Queen-Empress*, I. L. R., 21 Calc., 955, *Emperor v. Lyall*, I. L. R., 29 Calc., 128, *Reg v. Khanderav Bajirav*, I. L. R., 1 Bom., 10, *Emperor v. Chellan*, I. L. R., 29 Mad., 91, *Emperor v. Bhulotan Singh*, 6 Pat., L. J., 264, and *Emperor v. Panna Lal*, I. L. R., 46 All., 265, referred to.

Emperor v. Shera, I. L. R., 50 All. ... 625

**CRIMINAL PROCEDURE CODE, SECTION 342—Extent of protection given to an accused in the matter of statements made by him when being examined in court.]** An accused person being examined by the court under section 342 of the Code of Criminal Procedure was asked why the charge had been brought against him, and he replied that it was through enmity on the part of the complainant. He was then asked if he had anything further to say, and he proceeded to give reasons for the alleged enmity, in the course of which he falsely made defamatory statements against the complainant.

*Held*, that the accused was exempt from prosecution in connection with the statement so made by reason of section 342(2) of the Code. *Champa Devi v. Pirbhu Lal*, 24 A. L. J., 329, *Bai Shanta v. Umrao Amir Malik*, I. L. R., 50 Bom., 162, *In re Venkata Reddy*, I. L. R., 36 Mad., 216, and *Satish Chandra Chakravarti v. Ram Dayal*, I. L. R., 48 Calc., 388, referred to.

Emperor v. Murli Pathak, I. L. R., 50 All. ... 169

**CRIMINAL PROCEDURE CODE, SECTION 422—Jail appeal—Right of accused, where notice has been given, to appear in person at the hearing of his appeal.]** Where a convict has appealed from jail, and notice of the hearing of the appeal has been sent in the terms of section 422 of the Code of Criminal Procedure, the appellant has a right, if he so desires, and if he is not represented by any legal practitioner, to appear in person at the hearing of his appeal. *Queen-Empress v. Pokpi*, I. L. R., 13 All., 171, and *Ram Prasad v. Emperor*, 103 Indian Cases, 407, dissented from.

Emperor v. Lal Bahadur, I. L. R., 50 All. ... 543

**CRIMINAL PROCEDURE CODE, SECTION 439(4)—Charge of murder—Conviction of culpable homicide—Revision—Jurisdiction on revision—Priory Council practice—Conviction by court without jurisdiction.]** The appellant was tried by a Sessions Judge on a charge of murder under section 302 of the Indian Penal Code. He was convicted under section 304 of culpable homicide not amounting to murder, there being power by section 238 (2) of the Code of Criminal Procedure so to convict him upon the charge under section 302; he was sentenced to five years' rigorous imprisonment. No acquittal of the charge under section 302 was

recorded. The Local Government did not appeal, but applied for revision on the grounds that the appellant should have been convicted of murder, and that the sentence was inadequate. The High Court thereupon convicted the appellant of murder and sentenced him to death.

*Held* that the finding at the trial was to be regarded as an acquittal on the charge of murder, and that consequently section 439 (4) of the Code of Criminal Procedure precluded the High Court from having jurisdiction upon revision to convict on that charge; that though upon an appeal by the Local Government the High Court would have had before it the same materials, yet, the order having been made without jurisdiction, an injustice had been done to the appellant, bringing the case within the restricted jurisdiction exercised by the Judicial Committee in criminal matters; that the case should not be remitted to the High Court to consider whether the sentence on the conviction under section 304 should be enhanced, but that the order of that Court should be set aside and the order of the Sessions Judge restored.

*In re Bali Reddi*, I. L. R., 37 Mad., 119, commented on; *Emperor v. Sheo Darshan Singh*, I. L. R., 44 All., 332, and *Emperor v. Shieputraya*, I. L. R., 48 Bom., 510, approved.

*Kishan Singh v. King-Emperor*, I. L. R., 50 All. ... 722

CRIMINAL PROCEDURE CODE, SECTION 537—*Irregularity—Riot—Cross cases—Use of evidence given in one case as evidence in the other—Inferences from consent of counsel to irregular procedure.* [There were two cases of riot being tried by the same Magistrate, which, though technically distinct, were both parts of the same controversy. The Magistrate, having tried one of the cases, when he came to the second, treated some of the evidence in the first case, by agreement of counsel in either case, as evidence in the second case—as though it had been solemnly repeated all over again by the witnesses or had been read over to them and acknowledged to be correct, although it was not formally transferred to the record of the second case.]

*Held*, that, inasmuch as the accused could not point to any way in which they might have been prejudiced, the procedure, though irregular, did not vitiate the trial. *Queen-Empress v. Chandra Bhuiya*, I. L. R., 20 Calc., 537, followed.

While no serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused, the fact that a certain course of procedure was in fact consented to by counsel for an accused person is an important element in considering the equally important question whether there has been any prejudice. *Abdul Rahman v. King-Emperor*, I. L. R., 54 L. A., 96, followed.

*Emperor v. Sukhai Ahir*, I. L. R., 50 All. ... 457

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| DHARDHURA— <i>Question re applicability of custom—Complete alteration in course of river—No evidence of similar change on previous occasions.</i> ] Notwithstanding the admission of the existence. as between two villages situated on opposite banks of a river, of the custom of dhardhura, it was held that such custom was not applicable to the case of the river suddenly and completely altering its course and cutting off a large and recognizable area from one village, in face of the fact that no evidence was given that such a complete change of course had ever happened before for a space of twenty-two years. <i>Gulab Rai v. Girwar Singh</i> , I. L. R., 49 All., 195, referred to. |       |
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| DIVORCE— <i>Husband's petition—Wife charged with committing adultery—Misconduct of petitioner—Discretionary bar—Principles governing exercise of discretion vested in matrimonial courts.</i> ] In the trial of matrimonial cases, the court must have regard not only to the rights and liabilities of the matrimonial person wronged and of the wrong-doer, respectively <i>inter se</i> , but also to the interests of society and public morality, and the court should, therefore, in the exercise of every discretion which is vested in it, endeavour to promote virtue and morality and to discourage vice and immorality while exercising its discretion.   |       |
| Where Parliament has not thought fit to define or specify any cases, or classes of cases, for its application the court ought not to limit or restrict that discretion by laying down rules within which alone the discretion is to be exercised. <i>Morgan v. Morgan</i> , 1 P and M., 644, <i>Constantinidi v. Constantinidi</i> , [1903] P., 246, <i>Wyke v. Wyke</i> , [1904] P., 149, <i>Pretty v. Pretty</i> , [1911] P., 83, <i>Schofield v. Schofield</i> , [1915] P., 207, <i>Tickner v. Tickner</i> , [1924] P., 118, <i>Constantinidi v. Constantinidi</i> , [1905] P. 270, and <i>Wickins v. Wickins</i> , [1918] F., 265, referred to.  |       |
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| ESTOPPEL— <i>Family arrangement—"Bonâ fide dispute."</i> ] The only requisite necessary to make valid a family arrangement is that it should be a transaction between members of the same family which is for the benefit of the family generally as, for example, one which tends to the preservation of the family property, to the peace or security of the family and the avoiding of family disputes and litigation, or to the securing of the honour of the family.  |       |
| The expression " <i>bonâ fide dispute</i> " means nothing more than that each party must intend to press his claim to the property by litigation or otherwise. It has nothing to do with whether the claim is good or bad in law.  |       |
| <i>Sidh Gopal v. Bihari Lal</i> , I. L. R., 50 All.  | 284   |

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| HINDU LAW—Adoption—Suit to set aside an adoption—Estoppel—Limitation—Act No. IX of 1908 (Indian Limitation Act), |       |

*schedule I, articles 91 and 118—"Khandani rishtedar", interpretation of—.*] *Held*, on a construction of a clause in a will forbidding the adoption by the widow of the testator of a *khandani rishtedar* of her father's family, that the son of a daughter of a brother of the widow was not such a *khandani rishtedar* and his adoption was, therefore, not opposed to the conditions laid down in her husband's will. *Rudhay Parshad v. Nannu*, 5 Indian Cases, 669, and *Khuman Singh v. Hardai*, I. L. R., 11 All. 41, distinguished.

In a suit to have an adoption set aside it is not necessary to sue also to set aside the deed by which the adoption is declared. The deed itself does not confer any status upon the person adopted: it only recites a fact and is evidence of the fact having taken place.

Where an adoption had taken place with great publicity and with due performance of all the necessary ceremonies, and a formal deed of adoption had been executed and registered and the adopted son had been received into the family of his adoptive father, and where, further, the adoption was not challenged for several years, it was *held* that an estoppel was created whereby the adoptive mother was precluded from afterwards disputing the adoption.

*Dharam Kunwar v. Balwant Singh*, I. L. R., 30 All., 549; I. L. R., 34 All., 398, *Sarat Chunder Day v. Gopal Chunder Laha*, I. L. R., 20 Calc., 296, and *Bhoomenthal v. Ford*, [1897] A. C., 156, referred to. *Dhanraj Joharmal v. Soni Bai*, I. L. R., 52 Calc., 482, and *Gopce Lall v. Musammat Sree Chandrasee*, I. L. R., I. A., Sup. Vol., 131, distinguished.

*Dharam Prakash v. Kalawati Devi*, I. L. R., 50 All. ... 685.

**HINDU LAW—Deed of settlement—Construction of deed—Gift to wife—Defeasance—Condition subsequent—Invalid condition—** *Act No. IV of 1882 (Transfer of Property Act), sections 28, 30.*] A deed of settlement executed in 1875 by a Hindu recited that his only surviving son *B* being of bad character and his declared enemy, he was compelled to exclude him from inheritance, and that there being nobody to represent the settlor except his surviving wife (the Rani), he had, therefore, made a gift to her of all his properties, together with all rights and interests, and he appointed her his successor and representative subject to conditions which followed. By condition 1, the zamindari and *malguzari* in five villages were to be "owned by the Rani just as I owned" them. By condition 2, he made a gift of the *jagir* property in seven villages to the Rani, reserving to himself the income during his life. By condition 3, if during the succeeding 16 years a lawful son were born to *B*, he should take the property on attaining majority, but if at the end of that period no son had been born, the Rani could give or bequeath the property to her daughter, or her daughter's son, and failing them could make an adoption. The settlor died in 1879. The appellant, a son of *B*, born in 1894, after attaining his majority, sued for possession. Conceding that the gift to him was void in Hindu law, since he was not born at the date of the deed, he contended that on the true construction of the deed the Rani's interest terminated on his attaining his majority, and that he was entitled as heir to the settlor.

*Held* that on the true construction of the deed the Rani and her successors took an estate which was not limited but absolute in point of duration, and that, according to the principle embodied in the Transfer of Property Act, 1882, sections 28, 30, the condition subsequent being invalid, her estate was not affected by it; and accordingly that the suit failed. *Doe v. Eyre*, 5 C. B., 713, distinguished.

*Narsingh Rao v. Mahalakshmi Bai*, I. L. R., 50 All. ... 378

**HINDU LAW—Co-widows—Separation—Alienation by one widow for legal necessity—Other widow's participation in alienation not necessary.]** Two co-widows, having entered into possession of the property of their deceased husband, divided the same between them, and one of them alienated, for legal necessity, a considerable part of her share. *Held*, on suit by the next reversioner, after their death, that the widow was competent to alienate for legal necessity even without the consent of her co-parcener. *Thakuramani Singh v. Dai Rani Koeri*, I. L. R., 33 Calc., 1079, followed. *Valluru v. Sasapu*, 49 M. L. J., 479, dissented from.

*Jai Narain Singh v. Munna Lal*, I. L. R., 50 All. ... 489

**HINDU LAW—Hindu widow—Alienation—Legal necessity—What evidence may be sufficient to support an alienation challenged after a considerable lapse of time.]** Recitals in a deed of sale with regard to the existence of legal necessity for an alienation by a Hindu widow are not in themselves evidence of such necessity without substantiation by evidence *aliunde*. But, though the onus lies upon the legal representatives of the transferee to prove the necessity for the sale, when it is challenged after a considerable lapse of time, full and detailed evidence cannot be expected, and in such circumstances presumptions are permissible to fill in the details which have been obliterated by time.

Furthermore, it is not absolutely necessary for a transferee to establish the actual existence of family necessities, or to show that the money advanced by him was utilized for such purposes. It is only necessary that a representation should have been made to the purchaser that such necessity existed and that he should have acted honestly and made proper inquiry to satisfy himself of its existence. The recital in the document is clear evidence of a representation, and if the circumstances are such as to justify a reasonable belief that an inquiry would have confirmed its truth, then, when proof of actual inquiry has become impossible, the recital coupled with such circumstances would be sufficient evidence to support the deed.

*Brij Lal v. Indra Kunwar*, I. L. R., 36 All., 187, *Venkata Reddi v. Rani Sahiba of Wadhwan*, I. L. R., 43 Mad., 541, and *Banga Chandra Dhur Biswas v. Jagat Kishore Acharjya Chowdhuri*, I. L. R., 44 Calc., 186, referred to.

*Ram Narain v. Nandrani Kunwar*, I. L. R., 50 All. ... 823

**HINDU LAW—Hindu widow—Suit for declaration by next male reversioner—Nearer female heir in existence—Effect of omission to implead the nearer reversionary heir—Act No. I of 1877 (Specific Relief Act), section 42.]** Plaintiff alleging himself to be the nearest reversionary heir of her husband, brought a suit against a Hindu widow asking, first, for a declaration of his status as presumptive reversionary heir, and, secondly, for a declaration that a will alleged to have been executed by the husband shortly before his death was a forgery.

At the time of suit there was in existence a nearer heir in the shape of a minor daughter of the defendant, who lived with her, but she was not made a party to the suit.

*Held* (1) that, as regards the first relief sought, the suit was not maintainable;

(2) that, as regards the second relief, although it is not correct to say that the existence of a nearer female heir can always be ignored by the next male reversioner, yet, even without any express proof of refusal, concurrence or collusion on her part, the court may exercise its discretion and grant the declaratory relief to the male reversioner, and that without insisting upon the

female heir being joined in the suit, provided that such a course is not prejudicial to her interests. *Rani Anand Kunwar v. The Court of Wards*, I. L. R., 6 Cal., 761, *Madari v. Malki*, I. L. R., 6 All., 428, *Balgobind v. Ram Kumar*, I. L. R., 6 All., 431, *Ishwar Narain v. Janki*, I. L. R., 15 All., 132, *Hanuman Pandit v. Joti Kunwar*, Weekly Notes, 1908, p. 207, *Raja Dei v. Umed Singh*, I. L. R., 34 All., 207, *Lakhipati v. Rambodh Singh*, I. L. R., 37 All., 350, *Rangad v. Rambihara*, 4 Pat. L. J., 734, *Venkatanarayan Pillai v. Subbammal*, I. L. R., 38 Mad., 406, and *Kesho Prasad Singh v. Sheo Pargash Ojha*, I. L. R., 44 All., 19, referred to.

*Deoki v. Jwala Prasad*, I. L. R., 50 All. ... 678

**HINDU LAW**—*Hindu widow*—*Transfer surrendering in favour of next reversioner*, followed by sale-deed by the latter—*Transaction amounting to sale by widow*—*Consent of next reversioner*, effect of—*Legal necessity*—*Presumption*—*Burden of proof*.] A Hindu widow executed a deed of transfer of a portion of the property of her late husband, in favour of a person who at the time was the next presumptive reversioner, purporting to surrender all her interest in the property conveyed. The next day the transferee sold the property, and both deeds were registered consecutively on that day. The transferee died before the widow, and on the widow's death the then reversioners sued the vendee for recovery of the property which he had purchased.

*Held* that, although it was evidenced by two separate deeds, the whole transaction was really one, and amounted to a transfer by the widow with the consent of the next reversioner, and this could not be upset unless the plaintiffs were prepared to lead evidence (which they were not) to show that there was in fact no legal necessity for the transfer or that the consent of the transferee reversioner had been obtained by fraud. *Rangasami Gounden v. Nachiappa Gounden*, I. L. R., 42 Mad., 523, and *Debi Prasad Choudhry v. Golap Bhagat*, I. L. R., 30 Cal., 721, referred to.

*Muhammad Sa'id Khan v. Kunwar Darshan Singh*, I. L. R., 50 All. ... 75

**HINDU LAW**—*Joint Hindu family*—*Capacity of mother as de facto guardian of her minor son in the compulsory absence of the father to borrow for the purpose of discharging debts due by the father*.] The father in a joint Hindu family, consisting of himself and two minor sons, was convicted in a riot case and sentenced to a long term of imprisonment. Whilst he was in jail and the mother was left as *de facto* guardian of her minor sons, she raised money on a mortgage of some property which her husband had given her, mainly to pay off some debts of his, and to some extent other debts which she had herself incurred on promissory notes. The mortgage being put into court was held for technical reasons to be invalid, but a personal decree was given against the mother.

*Held*, that the judgement creditor was competent under this decree to proceed against the joint family property, so far as the previous debts of the father were concerned. *Debi Mangal Prasad v. Mahadeo Prasad*, I. L. R., 34 All., 234, *Devji v. Sambhu*, I. L. R., 24 Bom., 135, and *Verabadra Aiyar v. Marudaga Nachiar*, I. L. R., 34 Mad., 188, referred to.

*Tara Kiran v. Hari Kishan Das*, I. L. R., 50 All. ... 447

**HINDU LAW**—*Mitakshara*—*Joint family including minors*—*Karta*—*New business started by borrowing money on the security of family property*—“*Benefit to the estate*”—*Admitting minor to benefit of partnership*—Act No. IX of 1872 (*Indian Contract Act*), section 247.] It is not competent to the manager of a



joint Hindu family comprising minor members to raise money on the security of the family property in order to start a new business, even if such business may reasonably be supposed likely to be a profitable one. The "benefit to the estate" contemplated by their Lordships of the Privy Council in *Hunooman Persaud Pandey v. Babooee Munraj Koonwaree*, 6 Moo. I. A., 393, must be a benefit of a "defensive nature", calculated to protect the estate from possible danger or destruction.

- *Sanyasi Charan Mandal v. Krishna Dhan Banerji*, I. L. R., 49 Cal., 560, *Palaniappa Chetty v. Sreemath Devasikamony Pandara Sannadhi*, I. L. R., 40 Mad., 709, *Shankar Sahai v. Bechu Ram*, I. L. R., 47 All., 381, *Mahabir Prasad Misr v. Amla Prasad Rai*, I. L. R., 46 All., 364, *Jagmohan Agrahri v. Prag Ahir*, I. L. R., 47 All., 452, *Jado Singh v. Nathu Singh*, I. L. R., 48 All., 592, and *Tadibulli Tammireddi v. Tadibulli Gangireddi*, I. L. R., 45 Mad., 281, referred to. *MacLaren Morrison v. Verschoyle*, 6 C. W. N., 429, distinguished.

*Inspector Singh v. Kharak Singh*, I. L. R., 50 All. ... 776

**HINDU LAW**—*Joint Hindu family*—*Alienation of family property by managing member*—*Benefit to the estate*—*Whether transaction must necessarily be of a defensive nature*—*Criteria for judging propriety of transaction.*] In order to sustain an alienation of joint family property made by the managing member of the family the transaction must be one which is for the benefit of the estate and such as a prudent owner would have carried out with the knowledge available to him at the time. Transactions justifiable on the principle of "benefit to the estate" are not limited to those transactions which are of a "defensive nature".

The transaction must be judged, not by its actual results but by what might have been expected to be its results, at the time it was entered into. The degree of prudence which might fairly be required from a person who was not the sole owner of the property might naturally be somewhat greater than that which might be expected in the case of a sole owner and might well be held to be that which would be demanded in ordinary cases from a trustee. *Hunooman Persaud Pandey v. Babooee Munraj Koonwaree*, 6 Moo., I. A., 393, *Sahu Ram Chandra v. Phup Singh*, I. L. R., 39 All., 37, *Palaniappa Chetty v. Sreemath Daicasikamony Pandara Sannadhi*, I. L. R., 40 Mad., 709, *Krishna Chandra v. Ratan Ram Pal*, 20 C. W. N., 645, *Muneshkar Bakhsh Singh v. Arjun Singh*, 19 Oudh Cases, 100, *Tula Ram v. Tulshi Ram*, I. L. R., 42 All., 559, *Mahabir Prasad Misr v. Amla Prasad Rai*, I. L. R., 46 All., 364, *Jado Singh v. Nathu Singh*, I. L. R., 48 All., 592, *Sadhu Saran Prasad v. Brahmdco Prasad*, 61 Indian Cases, 20, *Kalika Nand Singh v. Shiva Nandan Singh*, 63 Indian Cases, 625, and *Sheetahal Singh v. Arjun Das*, 56 Indian Cases 879, referred to. *Shankar Sahai v. Bechu Ram*, I. L. R., 47 All., 381, *Bhagwan Das Naik v. Mahadeo Prasad Pal*, I. L. R., 45 All., 390, *Inspector Singh v. Kharak Singh*, I. L. R., 50 All., 776, and *Rattan Chand v. Sri Thakur Ram Kishan Murarji*, 26 A. L. J., 777, not followed.

*Jagat Narain v. Mathura Das*, I. L. R., 50 All. ... 969

**HINDU LAW**—*Joint Hindu family*—*Son's liability for father's debts*—*Defences to suit by creditor*—*Immorality of father or want of legal necessity*—*Burden of proof*—*Antecedent debt.*] Once a mortgagee has established that the loan advanced by him to the mortgagor was for payment of antecedent debts, it is no longer incumbent upon him to prove that these antecedent debts were in themselves for necessity. In order to get rid of his liability, the burden then

lies on the son to establish that those antecedent debts were tainted with immorality or illegality. *Maharaj Singh v. Balwan Singh*, I. L. R., 28 All., 508, referred to. *Nanomi Babuasin v. Modhun Mohun*, I. L. R., 13 Calc., 21, and *Brij Narain v. Mangal Prasad*, I. L. R., 46 All., 95, followed.

Mere proof of the general immoral habits of a mortgagor at the time the debts were advanced is insufficient to justify the court in presuming that the debts were so tainted. The connexion between the immorality and the debt must be proved before the debt can be vitiated. *Sri Narain v. Lala Raghubans Rai*, 17 C. W. N., 124, referred to. *Babu Singh v. Bihari Lal*, I. L. R., 30 All., 156, *Narendra Bahadur Singh v. Abdul Haq*, 30 Indian Cases, 216, and *Dhullipallia v. Kuppa Venkatakrishnayya*, 36 M. L. J., 296; 58 Indian Cases, 797, followed.

*Tulshi Ram v. Bishnath Prasad*, I. L. R., 50 All. ... 1

**HINDU LAW—Joint family property—Mortgage—Mortgage executed by two brothers, one being the karta, of the family—Suit on mortgage followed by decree—Right of member of the family not made a party to the suit to challenge the decree before execution without alleging that the original debt was tainted with immorality.]** Two brothers, one of whom was the managing member in a joint Hindu family consisting of themselves and their children, executed a mortgage of some of the family property. The mortgagee sued on his mortgage. One of the brothers having died before decree, his two sons were brought upon the record in his place; but the minor son of the other brother was not made a party to the suit at all. This son, after the mortgagee had obtained a decree, but before it had been executed, sued to have the decree set aside upon the ground that the property concerned was ancestral and that there was no legal necessity for incurring the debt to secure which the mortgage had been executed. He did not allege that the debt was tainted with immorality.

*Held*, that the suit must fail. *Suraj Bansi Koer v. Sheo Persad Singh*, I. L. R., 5 Calc., 148, *Armugham Chetty v. Muthu Koundan*, I. L. R., 42 Mad., 711, *Chandradeo Singh v. Mata Prasad*, I. L. R., 31 All., 176, *Brij Narain v. Mangal Prasad*, I. L. R., 46 All., 95, *Sahu Ram Chandra v. Bhup Singh*, I. L. R., 39 All., 437, *Ali Ahmad v. Sohan Lal*, 12 A. L. J., 613, and *Gauri Shankar v. Jang Bahadur Singh*, 79 Indian Cases, 1008, referred to.

*Lal Singh v. Jagraj Singh*, I. L. R., 50 All. ... 516

**HINDU LAW—Joint Hindu family—Partition—Facts necessary to constitute separation—Intention of members.]** Separation is the result of intention among the members of a joint Hindu family. That separation can be effected either by deed or by acts, or both by deed and acts. If the deed be unequivocal in its language and the intention of the parties is clear from it, it would not be necessary to prove acts in support of the deed. *Balkishen Das v. Ram Narain Sahu*, I. L. R., 30 Calc., 738, and *Palani Ammal v. Muthuvenkatachala Moniagar*, I. L. R., 48 Mad., 251, referred to.

*Jai Narain Rai v. Baijnath Rai*, I. L. R., 50 All. ... 615

**HINDU LAW—Joint Hindu family—Partition between sons—Effect of pendency of partition proceedings on mortgage given by sons—Nature of mother's estate in property given to her on partition.]** Pending proceedings for the partition of joint family property between the sons, the father being dead, the sons mortgaged a portion thereof. On the completion of the partition the portion mortgaged fell to the share of the mother.

*Held*, that the doctrine of *lis pendens* applied and the mortgage was not binding on the property in the hands of the mother.

*Held also*, that a mother at the time of partition has no share as a co-parcener. She is only entitled to maintenance, and if a share is given to her on partition, it is given to her by way of provision for her maintenance, and when the necessity for maintenance ceases, the property will revert to the estate from which it was taken. *Debi Mangal Prasad Singh v. Mahadeo Prasad Singh*, I. L. R., 34 All., 234, referred to.

*Muni Lal v. Phula*, I. L. R., 50 All. ...

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**HINDU LAW**—*Mitakshara*—*Joint family property*—*Partition between uncle and nephew on death of grandfather*—*Grandmother entitled to a share.*] In the case of partition between a son and a grandson (being the son of a deceased son) of a Hindu female she is entitled to a share. *Sheo Narain v. Janki Prasad*, I. L. R., 34 All., 505, and *Kankaiya Lal v. Gaura*, I. L. R., 47 All., 127, referred to.

*Babuna Kunwar v. Jagat Narain Singh*, I. L. R., 50 All. ...

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**HINDU LAW**—*Joint Hindu family*—*Separation*—*Ascertainment of shares of members not conclusive evidence of separation*—*Second Appeal*—“*Question of law.*”] A mere ascertainment of shares of a joint family is not conclusive evidence of separation, but the burden of proving that, notwithstanding the ascertainment of shares of the various members of the family, the family continued to be a joint family lies on the person making the assertion. *Palani Ammal v. Muthuvenkatachala Moniagar*, I. L. R., 48 Mad., 254, referred to.

“The proper effect of a proved fact is a question of law.” *Dhanna Mal v. Moti Sagar*, I. L. R., 8 Lahore, 573, followed.

*Beti v. Sikhdar Singh*, I. L. R., 50 All. ...

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**HINDU LAW**—*Mitakshara*—*Succession*—*Sapindas*—*Exclusion of grand-nephew by nephew.*] According to the Hindu law of succession of the *Mitakshara* school, as between a nephew and a grand-nephew (son of the nephew's brother) there is no representation, but the nephew will take the whole of the uncle's property to the exclusion of the grand-nephew.

*Buddha Singh v. Laltu Singh*, I. L. R., 37 All., 604, *Khetur Gopal, Chatterjee v. Poorno Chunder Chatterjee*, 15 W. R., C. R., 482, *Muttuvaduganatha Tevar v. Periasami*, I. L. R., 16 Mad., 11, and *Marudayi v. Doraisami Karambian*, I. L. R., 30 Mad., 348, referred to.

*Sher Singh v. Basdeo Singh*, I. L. R., 50 All. ...

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**HINDU LAW**—*Jains*—*Special custom empowering a widow to deal at will with the property of her late husband*—*Stridhan.*] According to the Hindu law of the *Mitakshara* school, there is no distinction between *stridhan* and “property that a widow can deal with at her pleasure.”

In the case of a Jain family, subject in other respects to the law of the *Mitakshara*, a custom was found by which the widow of a separated Jain could deal with the property of her late husband in any way she pleased.

*Held* that such property was the widow's *stridhan* and was governed by the rules of descent applicable to *stridhan* property.

*Debi Mangal Prasad Singh v. Mahadeo Prasad*, I. L. R., 34 All., 235, *Sheo Shankar Lal v. Debi Sahai*, I. L. R., 25 All., 463, *Lakshmi Narain Misir v. Musammatt Sumarti Kunwar*,

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| I. L. R., 46 All., 439, <i>Sheo-Singh Rai v. Dakho</i> , I. L. R., 1 All., 688, and <i>Ram Kali v. Gopal Dei</i> , I. L. R., 48 All., 648, referred to. |     |
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the order, no tie of relationship remains between him and his natural relations, and neither can succeed to the private property of the other. *Ramdhan Puri v. Dalmir Puri*, 2 Indian Cases. 385, followed.

The rules of succession and devolution prevailing in a particular *math* are governed by the particular customs which apply to it.

Properties belonging to a *math* of the order of *Dasnami Goshains* had descended from *guru* to *chela* for several generations, but from 1874 to 1922 the *mahant* of the *math* had been exercising rights of private ownership over some of them by making usufructuary mortgages. There was no reliable evidence that the properties so alienated were trust properties. *Held*, that there was no legal presumption that these properties were trust properties, and such alienation could not be contested by a *chela* of the *guru* who had made them. *Indar Singh v. Fatch Singh*, I. L. R. 1 Lah., 540, distinguished.

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MORTGAGE—Prior and subsequent incumbrances—Right of purchaser to set up the prior mortgage which he has paid off against the second mortgagee—Presumption of intention—Mortgage by guardian of minor without necessary sanction—Act No. VIII of 1890 (*Guardians and Wards Act*), section 30—*Civil Procedure Code*, order XLI, rule 33.] The certificated guardian of her minor son mortgaged, without obtaining the sanction of the District Judge, certain shares belonging to both in two villages, NR and A. These were subject to a prior mortgage. Subsequently the shares in NR were sold, with the sanction of the District Judge, and there was left with the purchasers a sufficient amount of the purchase money to pay off both the mortgages. The purchasers paid off the first mortgage, but not the second. The second mortgagee then sued on his mortgage, and the purchasers set up their rights under the first mortgage as a defence. They also pleaded that the second mortgage, having been made without the sanction of the District Judge, was invalid.

*Held* (1) that in the circumstances the purchasers were not entitled to set up the first mortgage as a shield against the second mortgagee's claim, inasmuch as their intention, at the time of their purchase, was clearly to discharge and extinguish all the incumbrances on the property, *Gokaldas Gopaldas v. Puranmal Premeukhdas*, I. L. R., 10 Cal., 1035, *Muhammad Sadiq v.*

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*Ghaus Muhammad*, I. L. R., 33 All., 101, and *Makkhan Lal v. Natthi*, 21 A. L. J., 382, referred to;

(2) that the purchasers were not estopped from questioning the validity of the second mortgage so far as it affected the minor's share, but if they did so, they were bound to make restitution to the extent that the minor had benefited by the mortgage money. *Nur Baksh v. Rulcum Singh*, 8 A. L. J., 754, followed;

(3) that the guardian's share in the property covered by the second mortgage was liable, and

(4) that, although the mortgagee had not appealed against the decree of the lower appellate court so far as it dismissed his claim altogether as against village A, it was nevertheless open to the High Court, while modifying the decree of the lower appellate court in favour of the defendants appellants, to give the plaintiff respondent a decree as against the guardian's share in that village also, in view of order XLI, rule 33, of the Code of Civil Procedure. *Rungam Lal v. Jhandu*, I. L. R., 34 All., 32, followed. *Mahomed Khaleef Shirazi v. Les Tanneries Lyonnaises*, I. L. R., 49 Mad., 435, distinguished.

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**MORTGAGE—Redemption—Mortgaged property sold for arrears of rent which the mortgagee was bound to pay—Purchase by mortgagee—Equity of redemption not lost.]** The mortgagee of a fixed-rate holding, who was under a covenant to pay the rent of the holding to the zamindar, made default in such payment, in consequence of which the holding was sold, and it was purchased by the mortgagee himself. *Held*, that the mortgagee could not by his own wrongful act deprive the mortgagor of his rights, and the mortgagor's equity of redemption still subsisted. *Nawab Sidhe Nazur Ally Khan v. Rajah Ojoodhyaram Khan*, 10 Moo., I. A. 540, *Kalappa bin Giriappa v. Shicaya bin Shielingaya*, I. L. R., 20 Bom., 492, and *Babaji v. Magniram*, I. L. R., 21 Bom., 396, referred to.

*Jaikaran Singh v. Sheo Kumar Singh*, I. L. R., 50 All. ... 36

**MORTGAGE—Suit for sale—Limitation—"Notice"—Act No. IX of 1908 (Indian Limitation Act), schedule I, article 132.]** A simple mortgage, executed on the 1st of May, 1909, for a term of three years, contained a stipulation to the effect that, if the mortgagor transferred the mortgaged property, the mortgagee would be at liberty to sue before the expiry of the term. On the 8th of March, 1911, the mortgagor stood surety for one Ali Raza in the amount of Rs. 50, and hypothecated a small share in the property covered by the deed of 1909. No actual notice of this transaction was given to the first mortgagee. A suit was filed on the mortgage of 1909 on the 27th of March, 1924, and the plea of limitation was set up by the defendants.

*Held* that the suit was within time. No actual notice of the hypothecation of 1911 had been given to the plaintiff mortgagee, and in the circumstances there was no legal duty cast on the mortgagee of 1909 to keep on searching the registers for further dealings of the mortgagor with the property comprised in his mortgage.

*Shib Dayal v. Meharban*, I. L. R., 45 All., 27, and *Pancham v. Ansar Hussain*, I. L. R., 43 All., 596, followed. *Nathi v. Tursi*, I. L. R., 43 All., 671, *Mata Tahal v. Bhagwan Singh*, 19 A. L. J., 406, and *Gaya Din v. Jhumman Lal*, I. L. R., 37 All., 400, referred to.

- Meaning of "notice," actual or constructive, discussed.  
*Barnhart v. Greenshields*, 9 Moo., P. C., 18, *Hewitt v. Loosemore*, 9 Hare, 449, *Janki Prasad v. Kishen Dal*, 1 L. R., 16 All., 478, and *Tilakdhari Lal v. Khedon Lal*, 1 L. R., 48 Cal., 1, referred to.
- Ashiq Husain v. Chatarbhuj*, 1 L. R., 50 All. ... 328
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- MUHAMMADAN LAW—*Dower—Widow's lien—Act No. 1 of 1877 (Specific Relief Act), section 9—Remedy of widow, if dispossessed.*] The lien of a Muhammadan widow over property, on account of her dower debt, only operates so long as she remains in possession of the property. On being deprived of possession, she has a right, independently of her lien, to recover possession within six months under the Specific Relief Act. The lien gives her no title, or right to recover possession, but only a right to retain possession. *Ali Bakhsh v. Allahdad Khan*, 1 L. R., 32 All., 551, approved. *Azizullah Khan v. Ahmad Ali Khan*, 1 L. R., 7 All., 353, referred to.
- Mashal Singh v. Ahmad Husain*, 1 L. R., 50 All. ... 86
- MUHAMMADAN LAW—*Dower—Nature of widow's possession in lieu of dower.*] The right of a Muhammadan widow is founded on her power as creditor for her dower, to hold the property of her husband, of which she has lawfully and without force or fraud obtained possession, until her debt is satisfied. But it does not follow from this that unless and until the widow actually enters into possession of the estate on the express assertion that she is taking possession in lieu of her dower debt, she cannot subsequently be allowed to raise such plea. *Musannat Bebec Bechun v. Sheikh Hamid Hossain*, 14 Moo. L. A., 377, *Ali Bakhsh v. Allahdad Khan*, 1 L. R., 32 All., 651, and *Ramzan Ali Khan v. Asghari Begam*, 1 L. R., 32 All., 563, followed.
- Muhammad Shoaib Khan v. Zaib Jahan Begam*, 1 L. R., 50 All. ... 423
- MUHAMMADAN LAW—*Pre-emption—Shafi khalit—Ownership of tree with overhanging branches—Plot divided by kachcha road over which the public had a mere right of way without ownership of the soil.*] In a suit for pre-emption under the Muhammadan law the property sold consisted of undivided shares in a plot of land adjoining the plaintiff's house. This plot was divided by a kachcha road over which the public had a right of passage, but the land of the road was not public property.
- Held* that the plaintiff was entitled to pre-empt the whole plot, and not merely the portion on his side of the kachcha road.
- Held* also that the fact that the branches of a tree project over the land of a neighbour does not give the owner of the tree any right as a shafi khalit.
- Harri Krishna Joshi v. Shankar Vithal*, 1 L. R., 19 Bom., 420, and *Abdul Shakur v. Abdul Ghafur*, 7 A. L. J., 641, referred to.
- Aziz Ahmad v. Nazir Ahmad*, 1 L. R., 50 All. ... 257
- MUHAMMADAN LAW—*Shias—Marriage—Shia girl married to a Sunni—Consent of bride—Presumption as to age of puberty—Guardian ad litem—Costs.*] According to the Muhammadan law applicable to the Shia sect, a girl is of full age when she attains the age of puberty, and, in the absence of direct evidence, there is a presumption that that event would occur between the ages of nine and ten years.



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Where, therefore, a *Shia* girl of the age of nearly thirteen years was married, with the consent of her father, but without her own, to a boy who was a *Sunni*, and before she attained the age of twenty-one years, she sued to have the marriage declared illegal and not binding on her, it was *held* that she was entitled to the decree asked for: the consent of the father could not in the circumstances take the place of the consent of the girl herself. *Nawab Mulka Jehan Sahiba v. Mahomed Ushkurree Khan*, 26 W. R., C. R., 26, followed.

There is no authority in the Code of Civil Procedure to award costs personally against a guardian *ad litem*. *Narasimha Rau v. Lakshmi pati Rau*, I. L. R., 3 Mad., 263, followed.

*Sibt Ahmad v. Amina Khatun*, I. L. R., 50 All. ... 733

MUHAMMADAN LAW—*Waqf*—*Waqf* not invalid for the sole reason that the first mutawalli is a minor.] A *waqf*, otherwise valid, will not fail for the sole reason that the mutawalli appointed by the *waqif* is a minor. *Piran v. Abdool Karim*, I. T. R., 19 Cal., 203, *Muhammad Nasim v. Muhammad Ahmad*, 27 Indian Cases, 389, *Khatun Begam v. Ejaz Ahmad*, 15 A. L. J., 132, and *Raza v. Ali*, I. L. R., 40 Mad., 941, referred to.

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PRE-EMPTION—Decree conditioned on payment of purchase-money within specified period of its becoming final—Meaning of "final."] *Held* that an appealable decree against which an appeal has not been filed becomes final on the expiry of the period of limitation prescribed for filing an appeal, and not from the day on which it was passed. *Hingun Khan v. Ganga Prasad*, I. L. R.,

1 All., 293, and *Narain Das v. Lachman Singh*, 1 L. R., 3 All., 135, dissented from. *Disa Singh v. Jaula Singh*, Weekly Notes, 1881, p. 165, *Shaikh Ewaz v. Mokuna Bibi*, 1 L. R., 1 All., 132, *Ram Sahai v. Gaya*, 1 L. R., 7 All., 107, *Gopal Das v. Mamna Kunwar*, 5 A. L. J., 136, and *Fazal Husain v. Fazal-ud-din*, 1 L. R., 47 All., 523, followed.

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PRE-EMPTION—*Suit for pre-emption by three plaintiffs—Suit dismissed—Appeal—Death of one plaintiff appellant pending appeal—Abatement—Custom—Effect of estate coming into the hands of a single proprietor.*] A suit for pre-emption was filed by three persons, each claiming a right to pre-empt the whole of the property sold. The suit was dismissed. The plaintiffs appealed, but, pending the appeal, one of them died, and his representatives were not brought upon the record within the period of limitation.

*Held*, that the effect of this was not that the appeal abated but that the deceased plaintiff appellant merely dropped out, and the other two plaintiffs were entitled to continue the appeal and, if they succeeded, to obtain a decree for pre-emption. *Mahar Singh v. Abhai Nandan Prasad*, 1 L. R., 49 All., 756, *Ambika Prasad v. Jhinak Singh*, 1 L. R., 45 All., 286, and *Wajid Ali Khan v. Puran Singh*, 1 L. R., 47 All., 100, overruled.

When once property comes into the hands of a single proprietor, any custom of pre-emption relating thereto must come to an end. The custom may grow up again, but its growth will have to be established by evidence. *Kamar-un-nissa Bibi v. Sughra Bibi*, 1 L. R., 39 All., 480, followed.

*Mahadeo Singh v. Talib Ali*, 1 L. R., 50 All. ... 792

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PRINCIPAL AND AGENT—*Forged bill presented by agent—Liability of principal.*] Plaintiff and defendant had dealings together and the defendant was in the habit of paying to the plaintiff's servants. One of the plaintiff's servants presented a bill, on which the defendant paid. The bill was afterwards found to be a forgery.

*Held*, that the plaintiff was liable to make good the amount paid by the defendant. *Barwick v. English Joint Stock Bank*, 1 L. R., 2 Exch., 259(266), followed.

*Lartab Narain v. The Jute Mills*, 1 L. R., 50 All. ... 29

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PRIVACY—*Existence of public lane between houses of parties not incompatible with existence of right.*] The fact that there is a public lane between the two houses concerned is not incompatible with the existence of a right of privacy. *Kuvarji Premchand v. Bai Javer*, 6 Bom. H. C. R., 143, *Jamil-ud-din v. Abdul Majeed*, 13 A. L. J., 361, *Fazal Haq v. Fazal Haq*, 26 A. L. J., 49, and *Gokul Prasad v. Radho*, 1 L. R., 10 All., 358, followed.

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| PROCEDURE— <i>Appeal—Change of law pending suit—Law by which the right of appeal will be governed.</i> ] A right of appeal in a suit is governed by the law prevailing at the date of the institution of the suit, and not by the law prevailing at the date of the decision of the suit or at the date of the filing of the appeal. <i>The Colonial Sugar Refining Company Ltd., v. Irving</i> , [1905] A. C., 369, <i>Delhi Cloth and General Mills Co., Ltd., v. Income-tax Commissioner</i> , I. L. R., 9 Lah., 284, <i>Dainanayaka Reddinar v. Renukambal Ammal</i> , I. L. R., 50 Mad., 857 and <i>Bala Prasad v. Shyam Behari Lal</i> 26 A.L.J. 406, followed. <i>Zamin Ali Khan v. Genda</i> , I. L. R., 26 All., 375, overruled. <i>Ram Singh v. Shankar Dayal</i> , I. L. R., 50 All.  | 965 |
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